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*Attorneys for Plaintiffs Richard Dent, et al.*

**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF CALIFORNIA**
**SAN FRANCISCO DIVISION**

RICHARD DENT, an individual, JEREMY NEWBERRY, an individual, ROY GREEN, an individual, J.D. HILL, an individual, KEITH VAN HORNE, an individual, RON STONE, an individual, RON PRITCHARD, an individual, JAMES MCMAHON, an individual, and MARCELLUS WILEY, an individual, on behalf of themselves and all others similarly situated;

Plaintiffs,

| | |
|---|---|
| v. | ) **CASE NO. C-14-2324 WHA/JCS** |
| | ) |
| NATIONAL FOOTBALL LEAGUE, a New York unincorporated association; | ) **THIRD AMENDED CLASS ACTION** ) **COMPLAINT** ) **DEMAND FOR JURY TRIAL** |
| Defendant. | ) **CLASS ACTION** |
| | ) |

COMES NOW the named Plaintiffs, by and through undersigned counsel and on behalf of themselves and a class of retired National Football League ("NFL" or the "League") players, who file this Third Amended Class Action Complaint against the NFL and allege as follows:

## INTRODUCTION

1. Plaintiffs seek redress for injuries resulting from a return to play business plan ("Business Plan") implemented and maintained by the NFL from at least the 1960s through 2014. The allegations herein are supported by hundreds, if not thousands, of documents that have been produced, and by testimony provided from Bud Carpenter (Buffalo Bills' trainer); Dr. Lawrence Brown (NFL medical advisor on prescription drugs since the early 1990s); Dr. David Chao (Los Angeles Chargers' doctor); Dr. Gerald Kuykendall (Miami Dolphins' doctor); Dr. John Marzo (Buffalo Bills' doctor); Dr. Matthew Matava (Los Angeles Rams' doctor); Dr. David Olson (Minnesota Vikings' doctor); Dr. Elliott Pellman (New York Jets' doctor and NFL medical advisor); Dr. Arthur Rettig (Indianapolis Colts' doctor); Dr. Andrew Tucker (Baltimore Ravens' doctor); and Dr. Anthony Yates (Pittsburgh Steelers' doctor), in a related case: *Etopia Evans, et al. v Arizona Cardinals Football Club, LLC, et al.* ("*Evans*").

2. The NFL's Business Plan has prioritized profit over safety with more games, less rest (*e.g.*, Thursday night football), and smaller rosters that save payroll expenses. And it achieves its ends because everyone involved in the League, save the players, has a financial interest in returning players to the game as soon as possible. From doctors to coaches to general managers

to League officials, their job and salary depend on this simple fact. The return to play plan was based on four cornerstone concepts: profit, media, non-guaranteed contracts, and drugs. As professional football took off, these bedrock concepts would become the driving force behind every business decision made by the League.

3. The NFL also manipulated the media to increase revenue and reinforce the return to play practice or policy. In 1965, the NFL created NFL Films to market video of its games, coaches, and players. NFL Films highlighted the violence of the game and the "toughness" of its players. Dramatic collisions between players were highlighted in slow motion. Players who returned to the game with severe injuries were lauded as courageous heroes. These same themes were repeated by the broadcast networks. American folklore regarding professional football players was indelibly established – the players were super human warriors who played through pain for the integrity of the game they loved. The return to play Business Plan became an accepted fact of doing business by the NFL as profits soared.

4. In its thirst for constantly-growing revenue, the NFL expanded from 24 to 32 Clubs, added two more regular season games (and are looking to add two more), expanded the number of Clubs participating in post-season play, and scheduled more games during the week (particularly on Thursday nights), leaving players with less recovery time and greater chances for new injuries or worsening of existing injuries.

5. In a survey by the Washington Post, nearly nine out of 10 former players reported playing while hurt. Fifty-six percent said they did this "frequently." An overwhelming number – 68 percent – said they did not feel like they had a choice as to whether to play injured.

6. Those players are right – the Defendant gave them no choice. From the beginnings of professional football to the present day, the NFL has created a coercive economic environment

in which all players have non-guaranteed contracts. The current standard player contract states that the player's salary is game to game and a player's contract can be terminated for lack of skill at any time (referred to as being "cut"). Players are constantly reminded by general managers, coaches and the media of the competitive nature of the game and the importance of playing. If a player is injured, coaches advise him to return to play as soon as possible to prevent a replacement from taking his spot on a Club. Rookie players are immediately told of the decades' long adage promulgated by the NFL – "You can't make the Club in the tub." The NFL exerts enormous economic pressure on the players to return to play as soon as possible and play through the pain. This financial reality is reinforced by the NFL-created image of the professional football player as heroic warrior. *See* "Promoting and Protecting the Health of NFL Players: Legal and Ethical Analysis and Recommendations" by Deubert, Cohen and Lynch (November 1, 1016) (hereinafter the "Harvard Report") at p. 72 – 73. "The pressures to perform and remain on the field at all costs can be extraordinary.… Indeed players feel pressure to play through injuries not only from their coaches but also from teammates, opponents, fans, media and others." The perspectives of all the groups mentioned are influenced and shaped by the NFL.

7. From the outset, the means by which the NFL facilitated the return to play Business Plan was the widespread availability of the Medications, as defined *infra*. The NFL has distributed these controlled substances and prescription medications with little to no regard for the law or the players' health. In 1994, former Raiders doctor Rob Huizenga noted in his book "*You're Okay, It's Just a Bruise": A Doctor's Sideline Secrets About Pro Football's Most Outrageous Team* that Raiders owner Al Davis routinely pressured players and doctors to do anything to get a player back on the field, regardless of the risks. And NFL doctors and trainers know that, if players are given adequate rest and do not return to the game, the doctor or trainer will be replaced. While that once

may not have caused any concern, as the position of Club doctor and trainer have become increasingly lucrative, the pressures on the medical personnel to return players to the field have only increased. The NFL has established a business culture in which everyone's financial interest depends on supplying Medications to keep players in the game.

8. When the DEA threatened the Business Plan in 2010, the reaction was resistance. A typical response is found in an e-mail dated November 3, 2010. Paul Sparling, the Bengals head trainer, writes to Dean Kleinschmidt, the Lions head trainer: "Until the VCML is actually in effect, we will continue to do as we have done for the past 42 years [*i.e.*, travel and distribute controlled substances in violation of federal law]…. I sure would love to know who blew up the system that worked all these years. It reminds me of when Charlie (from NFL security) told Marv, George Anderson, Ralph Berlin, etc., that having a bottle with more than one type of medications was co-mingling!" Clubs travelled with the Medications in violation of federal law until at least 2015, after the filing of this lawsuit.

9. The Business Plan is best exemplified by a single-page document produced in *Evans* that was prepared in 2014 by Dr. Thomas McClellan, an associate of Dr. Lawrence Brown, titled "The Role of League-Wide Incentives in Promoting the Opioid Use Problem: The Need for League-Wide Collaboration to Solve the Problem" (the "Opioid Use Problem").

10. In the Opioid Use Problem, Dr. McClellan identifies three issues, each of which have several sub-points. The first is "Pain and the Ability to Play Competitive Football," about which Dr. McClellan makes four points: (1) "Pain is omnipresent among NFL players – it is an almost unavoidable consequence of playing the game at the professional level;" (2) "NFL players who are in pain are not as able or as likely to play the game at their most competitive level;" (3) "NFL players who do not play at their competitive best could face loss of status and income;" and

(4) "NFL teams whose players do not compete at their best can face loss of status and revenue." His takeaway point: "It is in the players', the teams', and the league's reputational and financial interests to have the most competitive level of play and thus to find ways to overcome any impediment to competitive play – perhaps especially pain."

11. The next issue Dr. McClellan addresses is "Pain Relieving Medications and Competitive Football," about which he makes two points: (1) "Opioids and other non-opioid pain medications are demonstrably effective in the short term for relieving most forms of skeletal and muscular pain so often experienced by NFL players;" and (2) "For these reasons appropriate (properly prescribed and monitored) as well as inappropriate opioid and non-opioid pain medication use are both more common among NFL players." His takeaway point on this issue: "It is in the players', the teams', and the league's reputational and financial interests to use analgesic medications for pain relief. These incentives and the nature of the sport combine to make opioid and other pain medication usage much more prevalent in the NFL than in virtually any other industry, population or endeavor. This really means that there is shared responsibility and joint culpability for the problem."

12. Dr. McClellan's final issue is "Short and Long-Term Risks of Pain Medication Use in Professional Football," about which he makes three points: (1) "Players in pain who would otherwise not play or play at the same level of competitiveness may be induced by a pain medication and their personal financial/reputational incentives to play under conditions that could exacerbate their injuries and hinder their recovery;" (2) "Players who take opioid or other abuse-liable medications – especially for protracted periods or at high dosages – will be at longer-term risk for developing abuse or addiction;" and (3) "Because opioids relieve pain that might otherwise prevent or diminish normal willingness or ability to play football – they can be considered

'performance enhancing drugs' although not in the same sense as amphetamines or stimulants." His takeaway point on this issue: "Because of the shared responsibility for the nature of the problem; because of the multiple incentives for using pain medications; and because the short and long term risks of pain medication use and abuse have already been demonstrated – it is in the shared interests of the players, the teams and the league to take combined action to find practical solutions to the problem – these solutions must address some of the powerful incentives for pain medication use that are endemic to the sport."

13. Plaintiffs do not know whether the League has sought "to find practical solutions to the problem" since Dr. McClellan issued the foregoing document. But they do know that, from at least 1969 through 2008 when they played in the League, controlled substances and medications requiring prescriptions were illegally provided to them and thousands of other players in quantities and at frequencies that shock the conscience. And based on documents and testimony provided in *Evans*, those illegal practices continued until at least 2014.

14. Over the course of those five decades, medications have changed. Amphetamines, which at one time were left out in bowls in locker rooms, are not used as frequently now. Toradol is a more recent drug of choice in the League. But while the specific medications have changed, the NFL has dealt the following types of medications to its players consistently since 1969:

- **Opioids**: narcotics whose analgesic properties operate by binding to opioid receptors found primarily in the central nervous system and gastrointestinal tract. Opioids act to block and dull pain. The side effects of opioids include sedation and a sense of euphoria. Opioids are commonly known to be highly addictive and are indicated for short-term use by patients with no family or personal history of drug abuse and for those without significant respiratory issues.

- **Non-Steroidal Anti-Inflammatory Medications ("NSAIDs")**: a class of medications that have analgesic and anti-inflammatory effects to mitigate pain, the most common of which are Aspirin and Ibuprofen. All NSAIDs have blood thinning properties and have been linked to long-term kidney damage and other issues. Physicians deem Toradol particularly dangerous and its use is therefore generally limited to short-term administrations in

hospitals for surgical patients.

- **Local Anesthetics (such as Lidocaine)**: are generally indicated as a local anesthetic for minor surgery and are generally injected to numb the surrounding area. Lidocaine has been known to result in cardiac issues for certain patients and it is indicated for surgical use in patients without heart problems.

15. The foregoing medications ("Medications") were often administered without a prescription or side effects warnings and with little regard for a player's medical history, potentially-fatal interactions with other medications, or the actual health and recovery from injury of the player. Administering these Medications in this cavalier manner constitutes a fundamental misuse of carefully-controlled Medications and a clear danger to the players both at the time of administration and later-in-life.

16. The NFL was required to, or voluntarily undertook the duty to, comply with federal and state laws regulating the manner in which these Medications were administered and distributed. It failed to do so, consistently and repeatedly, from the 1970s through at least 2014 and that failure directly and proximately caused the injuries for which Plaintiffs seek damages.

## PARTIES

### I. THE PLAINTIFFS AND CLASS REPRESENTATIVES WERE VICTIMS OF DEFENDANT'S RETURN TO PLAY PLAN DURING THEIR NFL CAREERS.

17. The Class Representatives each played in the League between 1969 and 2008. Despite playing for different teams and at different times, their stories are remarkably similar. They suffer from two discrete sets of injuries directly caused by the League's omissions and concealment: (1) internal organ injuries, and (2) muscular/skeletal injuries caused or exacerbated by the Business Plan.

18. Plaintiff Richard Dent is a representative of the putative class as defined herein. As of the commencement of this action, he is a resident and citizen of Illinois. Mr. Dent played in a

total of 203 games as a defensive end for the Chicago Bears from 1983 – 1993 and again in 1995; the San Francisco 49ers in 1994; the Indianapolis Colts in 1996; and the Philadelphia Eagles in 1997. He was a four-time Pro Bowl selection; five-time All-Pro selection; two-time Super Bowl champion; and was inducted into the Pro Football Hall of Fame in 2011. He played two games in the state of New York and five games in the state of California, where he experienced the provision of Medications described herein.

19. While playing in the NFL, Mr. Dent received hundreds, if not thousands, of injections from doctors and pills from trainers, including but not limited to NSAIDs and Percodan. Mr. Dent recalls a daily ritual of going to breakfast with the team, then receiving whatever Medications necessary to get him on the field, taking them in time to be able to practice, and then taking downers at night to sleep.

20. Mr. Dent further recalls that, generally while playing with the Chicago Bears, he received Tylenol with Codeine; Percodan; Percocet; and Valium, which he took upon receipt, and Novacaine injections. He further states that he also received Valium from the San Francisco 49ers, the Indianapolis Colts, and the Philadelphia Eagles, which he took upon receipt.

21. Medical records provided by his NFL teams reveal that:

- In 1983, while with the Chicago Bears, he received pain-numbing and anti-inflammatory medications from Fred Caito and team physicians Dr. Clarence Fossier and Dr. John A. Brna, which he took upon receipt;
- In 1988, while with the Chicago Bears, he received pain-numbing and anti-inflammatory medications from Fred Caito and team physicians Dr. Clarence Fossier and Dr. John A. Brna, which he took upon receipt;
- In 1991, while with the Chicago Bears, he received pain-numbing and anti-inflammatory medications from Fred Caito and team physicians Dr. Clarence Fossier and Dr. John A. Brna, which he took upon receipt;
- In 1993, while with the Chicago Bears, Mr. Dent received 29 50 mg tablets of Pen VK, which he took as directed.

- In 1994, during his employment with the San Francisco 49ers, Mr. Dent was regularly provided with Feldene, Prednisone, Motrin, Vicodin, Celestone Soulspan with soluble Decadron, Indocsin, and Azulfidine, which he took upon receipt.

- In 1995, during his employment with the Chicago Bears, Mr. Dent was regularly provided with Depo-Medrol, Lidocaine, aqueous Decadron, Feldene, Azulfidine, and Prednisone, which he took upon receipt.

- In 1996, during his employment with the Indianapolis Colts, Mr. Dent was regularly provided with pain-numbing and anti-inflammatory medications by team doctors and trainers, which he took upon receipt.

- In 1997, during his employment with the Philadelphia Eagles, Mr. Dent was regularly provided with pain-numbing and anti-inflammatory medications by team doctors and trainers, which he took upon receipt.

22. Mr. Dent does not recall the dosage of the Medications he received and, more often than not, the person providing the Medication to Mr. Dent did not advise him of the dosage and, to the extent the Medication was provided in a container (regardless of what type of container), the container did not identify the dosage. Mr. Dent states the he took more Medications than his memory or his medical records indicate. He never received the statutorily required warnings about side effects of any of the Medications.

23. Mr. Dent also recalls his first injury during his NFL career. In his rookie year (1983), Mr. Dent played in the first preseason game. In the first practice after that game four players fell on him. His legs literally did the splits and he tore his hamstring and tendons/ligaments in his ankle. The pain was so bad it was difficult for Mr. Dent to sit on the toilet or even walk. Despite being put on several anti-inflammatory drugs and pain killers, he questioned being put back on the field. He ended up playing in the last preseason game, doped up to the point that he could hardly remember playing. This is where it started and went on from there; a pill for this or a shot for that. It was not until game 14 or 15 of the regular season that the pain truly began to subside.

24. In addition, medical records provided by his NFL teams reveal that Mr. Dent suffered many injuries during his NFL career:

- In 1983 he tore his right hamstring and left ankle ligaments;
- In 1988 he fractured his left fibula;
- In 1990 he suffered turf toe;
- In 1991 he fractured his collarbone;
- In 1994 he strained his left rear deltoid; strained his rhomboid in his right shoulder; suffered tendinitis in both his left and right knees; suffered a contusion on his left patella; suffered a concussion; suffered an avulsion fracture of the fibular head on his right knee along with ACL and MCL tears; suffered a talar break; and suffered bilateral boutonniere deformities on the fifth digits of his hand.
- In 1995 he suffered right quadriceps atrophy with moderate joint effusion.

25. Mr. Dent believes that the foregoing injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications to him. Many of these injuries were known only generally to Mr. Dent at the time of their occurrence; the specific nature or details of the injuries were generally withheld from Mr. Dent. Moreover, Mr. Dent was never contemporaneously informed or knowledgeable that his injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications. Mr. Dent also states that he had more injuries than his memory or his medical records would indicate.

26. At this time, Mr. Dent seeks redress for the muscular/skeletal injuries and internal organ injuries discussed above and below.

27. Mr. Dent trusted and relied on the NFL's doctors and trainers and would not have taken the Medications in the manner and amount in which he did had the Defendant provided him with the information it was legally obligated to provide as discussed herein.

28. Plaintiff Jeremy Newberry is a representative of the putative class as defined herein. As of the commencement of this action, he is a resident and citizen of California. Mr. Newberry played 120 games at center for the San Francisco 49ers from 1998 to 2006, the Oakland Raiders in 2007, and the San Diego Chargers in 2008. He was a two-time Pro Bowler; twice named to the All Pro team; and twice received the Ed Block Courage Award, an annual award voted on by players for colleagues who are models of inspiration, sportsmanship and courage. He played three games in the state of New York and 51 games in the state of California, where he experienced the provision of Medications described herein.

29. While playing in the NFL, Mr. Newberry received hundreds, if not thousands, of injections from doctors and pills from trainers, including but not limited to NSAIDs, Vicodin, Toradol, Ambien, Indocin, Celebrex, and Prednisone. Mr. Newberry received hundreds of Toradol injections over the course of his career and, for many games, would receive as many as five or six injections of other Medications during the course of a game. He also would receive Vicodin before, during and after games to numb pain and often during a game would simply ask a trainer for Medications, which would be provided without record as to what was being pushed on him.

30. During the course of his employment with the San Francisco 49ers and the Oakland Raiders, medical records provided by his NFL teams reveal that Mr. Newberry was provided with the following Medications by the following doctors:

- **Dr. Klint**: Augmentin 500 mg and Tylenol on September 8, 1999; Levaquin 500 mg, Tylenol, and Robitussin on November 19, 1999; Prednisone, liter of lactated ringer's solution, and albuterol on November 21, 1999; Turbinate injections, Ceftin 500 mg, Entex LA on November 5, 2000; Turbinate injection on December 4, 2000;

Toradol 60 mg IM on October 14, 2001, October 28, 2001, (November 4, 2001 – December 30, 2001, January 6, 2002 – November 17, 2002), November 25, 2002, December 1, 2002, December 8, 2002, Keflex 500 mg on December 11, 2002, Zithromax 500 and 250 mg on October 24, 2001, Augmentine 500 mg on December 24, 2002, 5-day Z-Pak on December 26, 2002; Toradol 60 mg IM on January 5, 2003;

- **Dr. Dillingham**: 1.0 cc of Celestone Soluspan and 1.0 cc Decadron on September 26, 1999; Xylocaine and soluble Decadron injections on October 13, 2001; Dexadron injection on October 13, 2001;.5 cc of .5% Marcaine on November 26, 2002, 1.5 cc .5% Marcaine and 1.5 cc 2% Xylocaine injection on December 15, 2002, 2 cc of .5% Marcaine with 2% Xylocaine injection on December 30, 2002; Prednisone on September 15, 2003, Steroid and local anesthetic injection on September 24, 2003; Prednisone on November 20, 2003; Dr. Bryan: Avapro 150 mg on May 8, 2004, Norvasc 5 mg on July 29, 2004; Vicodin on August 9, 2004, 5 day Prednisone Dosepak on November 27, 2004, Ibuprofen 800 mg on October 7, 2004, Prednisone on November 8, 2004; Keflex on June 15, 2005; Dr. Lambert: Synvisc injection on July 18, 2005; Steroid and Bupivacaine aspiration;

- **Dr. Millard**: Interdigital nerve block on November 26, 2002; 2 cc of 1% Xylocaine with .5% Marcaine injections on January 5, 2003; Prednisone 40 mg and Bextra on November 11, 2004; Dr. Oloff: ¼ cc of Dexamethasone and ¼ cc of 1% lidocaine plain; .5 cc of .5 % Marcaine with 1 cc of 2 % Xylocaine; Avapro and Norvasc on July 29, 2004;

- **Dr. Wall**: Non-steroidal anti-inflammatory injection on June 3, 2003; 1.5 cc of Kenalog and 2 cc of 1.0 percent Lidocaine; Kenalog and Lidocaine injection on August 6, 2004; Hyalgan injection on September 13, 2004;

- **Dr. Bryan**: Lomotil and Tylenol on June 4, 2003; Toradol 60 mg injection on September 4, 2003; Valtrex 2 gm and Denavir cream on December 10, 2003; Lotrel on September 6, 2005; Lotrel 5/20 mg, Robitussin AC and Z-Pak 500 mg on November 3, 2005; Avapro, Lotrel 10/20 mg, and Voltaren on November 30, 2005;

- **Stanford University Hospital and Clinics Diagnostic Radiology**: .5 ml of lidocaine, 2 mg Dexamethasone, 40 mg Triamcinolone, and 5 ml of Bupivacaine .25% were injected on August 6, 2004; Long acting steroid injection on August 6, 2004;

- **Dr. Donahue**: Keflex 500 mg on June 2, 2005;

- **Dr. Lambert**: Synvisc 2 cc injection on July 11, 2005, July 18, 2005, Lotrel 5/20 mg on July 29, 2005; Celebrex 200mg, Avapro, beta blocker for HTN on August 4, 2006; Sulfasalazine, Celebrex on August 4, 2006;

- **Dr. Oloff**: Dexamethasone on August 22, 2001; Dexamethason and Lidocaine injection on April 14, 2005; ¼ cc Dexamethasone and 1/44 cc of .5% Marcaine plain injection on September 3, 2005;
- **Dr. Phelan**: Zofran on December 1, 2005; and
- **Dr. King**: Duricef 500 mg on August 5, 2006; Cortisone shots in September 2007; Duricef on August 5, 2007; and Lebetol 10 mg IV x 2, Aspirin 325 mg.

31. Mr. Newberry further states that throughout the course of his career as a professional football player, he was provided with other unspecified Medications, including but not limited to non-steroidal anti-inflammatories, pain killers, injections, and muscle relaxers, which lack detailed documentation. Other than stated above, he does not recall the dosage of the Medications he received and, more often than not, the person providing the Medication to Mr. Newberry did not advise him of the dosage and, to the extent the Medication was provided in a container (regardless of what type of container), the container did not identify the dosage. He never received the statutorily required warnings about side effects of any of the Medications.

32. Mr. Newberry recalls that early in the 2004 season he hurt his left ankle and the team doctors told him it was a sprain. He played most of the season anyway, with the doctors giving him a significant amount of painkillers. After the season, he was told that he had completely torn the ligament in the ankle and he required surgery.

33. Mr. Newberry also recalls that he had a total of nine surgeries on his knees, five on his left and four on the right. Most of the surgeries were after the season, some during. To play, he received large amounts of Toradol, Vicodin and Percocet. In the 2005 and 2006 seasons, he remembers that his legs would stop working and he would fall over as if he had been shot. He would simply be given more painkillers.

34. Medical records provided by his NFL teams reveal that Mr. Newberry suffered many injuries during his NFL career as detailed in documents already provided by Mr. Newberry

at NEWBERRY_CONFID_000001-002668 and NEWBERRY_000001-000042. Mr. Newberry believes that the injuries identified in the foregoing documents were aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications to him. Many of these injuries were known only generally to Mr. Newberry at the time of their occurrence; the specific nature or details of the injuries were generally withheld from Mr. Newberry. Moreover, Mr. Newberry was never contemporaneously informed or knowledgeable that his injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications. Mr. Newberry also states that he had more injuries than his memory or his medical records would indicate.

35. At this time, Mr. Newberry seeks redress for the muscular/skeletal injuries and internal organ injuries discussed above and below.

36. Mr. Newberry trusted and relied on the NFL's doctors and trainers and would not have taken the Medications in the manner and amount in which he did had the League provided him with the information it was legally obligated to provide as discussed herein.

37. Plaintiff Roy Green is a representative of the putative class as defined herein. As of the commencement of this action, he is a resident and citizen of Arizona. Mr. Green played in a total of 190 games as a wide receiver for the St. Louis/Phoenix Cardinals from 1979 to 1990 and the Philadelphia Eagles from 1991 to 1992 during which time he caught 559 passes for 8,965 yards and 66 touchdowns and was a two-time Pro Bowler and twice named to the All-Pro team. He played 11 games in the state of New York and seven games in the state of California, where he experienced the provision of Medications described herein.

38. While playing in the NFL, Mr. Green received hundreds, if not thousands, of injections from doctors and pills from trainers, including but not limited to NSAIDs, Indocin, Naprosyn, Percocet, Vicodin, and Butisol.

39. Medical records provided by his NFL teams reveal that:

- In 1979 during his employment with the St. Louis Cardinals, Mr. Green was given an unspecified amount of Percodan by Dr. James Ellsasser on July 20th; Mr. Green was also given an unspecified amount of Valium and Indocin by Dr. James Ellsasser on July 20th.

- In 1980 during his employment with the St. Louis Cardinals, Mr. Green was given Percodan #24 on December 15th by Dr. James Ellsasser.

- In 1982 during his employment with the St. Louis Cardinals, Mr. Green was injected with 1 cc of both Xylocaine and Aristocort on November 29th by Dr. Jordan Ginsburg; Mr. Green was also given a 10 day course of Butazolidin on December 13th by Dr. Jordan Ginsburg.

- In 1984 during his employment with the St. Louis Cardinals, Mr. Green was injected with 1cc of Xylocaine and an unspecified amount of Aristocort on August 18th; Mr. Green was also injected with an unspecified amount Xylocaine on September 5th by Dr. Jordan Ginsburg; Mr. Green was also injected with an unspecified amount Marcaine on September 5th by Dr. Jordan Ginsburg.

- In 1985 during his employment with the St. Louis Cardinals, Mr. Green was injected with 10 cc of 0.5% Marcaine on November 28th and December 8th; Mr. Green was also injected with 8 cc of 0.5% Marcaine on December 21st, and an unspecified amount on November 4th, with all injections performed by Dr. Jordan Ginsburg.

- In 1986 during his employment with the St. Louis Cardinals, Mr. Green was injected with 1 cc of both Xylocaine and Aristocort on September 10th by Dr. Jordan Ginsburg; Mr. Green was also given an unspecified amount of Indocin on March 21st by Dr. Jordan Ginsburg; Mr. Green was also given an unspecified amount of Naprosyn on April 30th.

- In 1991 during his employment with the Philadelphia Eagles, Mr. Green was given Naprosyn on August 18th, October 3rd and October 8th; Mr. Green was also administered a combination of Emperin and Codeine on October 13th and an unspecified date in December; Mr. Green was also given an IV of Dextrose Decadron on an unspecified date.

- In 1992 during his employment with the Philadelphia Eagles, Mr. Green was on a course of 4 Naprosyn per day.

40. Mr. Green further states that throughout the course of his career as a professional football player, he was provided with other unspecified Medications including but not limited to non-steroidal anti-inflammatories, pain killers, injections, and muscle relaxers, including but not limited to Indocin, Naprosin, Percocet, Valium, and pain-numbing shots, which lack detailed documentation. He does not recall the dosage of the Medications he received and, more often than not, the person providing the Medication to Mr. Green did not advise him of the dosage and, to the extent the Medication was provided in a container (regardless of what type of container), the container did not identify the dosage. Mr. Green states the he took more Medications than his memory or his medical records indicate. He never received the statutorily required warnings about side effects of any of the Medications.

41. Mr. Green developed painful calcium build-ups on his Achilles tendons. Rather than treat the pain through rest or surgery, doctors and trainers gave him anti-inflammatories and he skipped practices to be able to play but ultimately the pain got so bad that he demanded to have surgery. The Cardinals' General Manager at the time, Hall of Famer Larry Wilson, pushed back but grudgingly told Green "it was his decision."

42. Medical records provide by his NFL teams reveal that Mr. Green suffered the following injuries during his NFL career:

- In 1979, he suffered a right gluteal hip sprain; a left quadriceps contusion; a left shoulder contusion; a sprain on his left big toe, a strain of his left quadriceps, neck stiffness and bilateral hamstring soreness;

- In 1980, he suffered an upper back muscle strain; a left knee prepatella burst contusion; a left hip flexor strain; a left hand contusion; a right knee contusion; a right gluteal hamstring strain; neck spasms; a left ankle sprain, a right hand contusion, and a left MCL sprain;

- In 1981, he fractured his left index finger a right shoulder AC joint sprain;
- In 1982, he suffered left hamstring tightness; neck stiffness; right knee tendonitis; a left groin strain; a left shoulder contusion; bilateral groin soreness; right plantaris fasciitis; and a left leg contusion;
- In 1983, he suffered right eye irritation; right knee contusion; a neck strain; a left ankle sprain; right knee patellar tendonitis; a right foot strain; left ulnar nerve contusion, and a right hamstring strain;
- In 1984, he suffered left hamstring soreness; left ankle inflammation; left ankle sprain; left thigh contusion; left groin sprain; left Achilles tendon inflammation; right hip contusion and a right neck/shoulder contusion; a left hand contusion; a left knee contusion;
- In 1985, he suffered chronic avulsion fracture and calcification of hemorrhage in his left deltoid ligament; a right big toe sprain; a left shoulder contusion; a left groin sprain; a concussion; and a left fibula contusion;
- In 1986, he suffered left Achilles tendonitis; a left quadriceps strain; left posterior ankle soreness; right Achilles tendonitis; a right shoulder AC sprain; a right arch sprain; a left ankle sprain; left heel soreness; left side lower back contusion; bilateral hamstring soreness; and a right shoulder AC contusion;
- In 1987, he suffered right quadriceps strain; left Achilles strain; right triceps contusion; left side cervical nerve pinch; left Achilles calcium inflammation; left and right hamstring strains; left quadriceps contusion; right knee patella tendonitis; right calf contusion; left gluteal contusion; and a left groin strain;
- In 1988, he suffered left heel cortical hyperostosis with thin bone spur; a left forearm contusion; bilateral hamstring soreness; a left Achilles soreness; low back-gluteal contusion; a right shoulder strain; a left thumb MP joint sprain; left ribs contusion; a right hip flexor strain; a right knee contusion; a left thigh contusion; and left side abdominal strain;
- In 1989, he suffered a left heel contusion; right knee patellar tendonitis; right shoulder grade 1 AC sprain; left posterior ribs/back contusion; left clavicle fracture; bilateral hip flexor soreness; a right wrist sprain; and a right ankle sprain;
- In 1990, he suffered a right hip flexor strain; right and left heel bursitis; left insertional Achilles tendonitis; a concussion; left ankle sprain; and right shoulder contusion;
- In 1991, he suffered a left Achilles injury and hamstring soreness; a left thumb ulnar collateral ligament sprain; a left ankle lateral sprain; and chronic left insertional Achilles tendinitis;

- In 1992, he suffered a right medial hamstring strain; a possible fracture of his left elbow; and left heel contusion;
- In 1993, he suffered from injuries to his left heel, right calf, right hamstring, left elbow, right groin and right hip and also suffered chronic left inertional Achilles tendonitis.

43. Mr. Green believes that the foregoing injuries were aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications to him. Many of these injuries were known only generally to Mr. Green at the time of their occurrence; the specific nature or details of the injuries were generally withheld from Mr. Green. Moreover, Mr. Green was never contemporaneously informed or knowledgeable that his injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications. Mr. Green also states that he had more injuries than his memory or his medical records would indicate.

44. At this time, Mr. Green seeks redress for the muscular/skeletal injuries and internal organ injuries discussed above and below.

45. Mr. Green trusted and relied on the NFL's doctors and trainers and would not have taken the Medications in the manner and amount in which he did had the Defendant provided him with the information it was legally obligated to provide as discussed herein.

46. Plaintiff J.D. Hill is a representative member of the putative class. As of the commencement of this action, he is a resident and citizen of Arizona. Mr. Hill played in a total of 73 games as a wide receiver for the Buffalo Bills from 1971 to 1975 and the Detroit Lions from 1975 to 1978, which released him during the 1979 preseason. He was named to the Pro Bowl team

in 1972. He played 26 games in the state of New York and four games in the state of California, where he experienced the provision of Medications described herein.

47. While playing in the NFL, Mr. Hill received hundreds, if not thousands, of pills from trainers and doctors, including but not limited to NSAIDs, Codeine, Valium, and Librium. Medical records provided by his NFL teams reveal that during his employment with the Buffalo Bills (1971-1975), Dr. K.H. Seagrave, Dr. John P. Kelly, Dr. Joe Godfrey and Dr. Richard Weiss generally provided him with Medications and Dr. Weiss prescribed either Codeine, Librium or Valium. During his employment with the Detroit Lions, Dr. William C. Ford, Dr. Edwin Guise, and Dr. Robert C. Nestor generally provided him with Medications. Mr. Hill was also prescribed Butazolidin on 8/19/77. Dr. Nestor provided Tylenol, Butazolidin and aspirin on 8/31/77 per a document signed by trainer Kent Faub.

48. In 1971, Mr. Hill took Codeine, Librium and Valium. Generally while with the Lions, Mr. Hill received painkillers and anti-inflammatories.

49. In 1976 Mr. Hill took Butazolidin and Aspirin. Generally while with the Bills, Mr. Hill received Librium, Valium, Codeine tablets, anti-inflammatories, and pain-numbing injections in his groin and shoulder.

50. Mr. Hill states the he took more Medications than his memory or his medical records indicate.

51. He never received the statutorily required warnings about side effects of any of the Medications.

52. Medical records provided by his NFL teams reveal that Mr. Hill suffered the following injuries during his NFL career:

- In 1971, he suffered several sprained ankles; a fractured nose; a torn right groin muscle; partially-separated or dislocated shoulders; turf toe; numerous broken and dislocated fingers and received surgery on his left knee;
- In 1973, he suffered a concussion and hyperextended both his elbows and wrists;
- In 1976, he suffered a low back strain; right pentineous and pectineulase strains; sprain to the mid-portion of his adductor region; left adductor strain; valgus stress to his left knee; hyperextended wrists; a partially-torn Achilles tendon, and injuries to his groin;
- In 1977, he suffered a contusion and strain of his right lower latissimus dorsi; a left knee effusion; a lower back strain; a right hamstring strain; and a left hamstring sprain;
- In 1978, he suffered a partial tear of his right Achilles tendon and a first-degree hamstring strain;
- In 1979, he suffered a first-degree hamstring spasm.

53. Mr. Hill believes that the foregoing injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications to him. Many of the injuries identified above were known only generally to Mr. Hill at the time of their occurrence; the specific nature or details of the injuries were generally withheld from Mr. Hill. Moreover, Mr. Hill was never contemporaneously informed or knowledgeable that his injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications. Mr. Hill also states that he had more injuries than his memory or his medical records would indicate.

54. At this time, Mr. Hill seeks redress for muscular/skeletal injuries and internal organ injuries discussed above and below.

55. Mr. Hill trusted and relied on the NFL's doctors and trainers and would not have taken the Medications in the manner and amount in which he did had the Defendant provided him

with the information it was legally obligated to provide as discussed herein.

56. Plaintiff Keith Van Horne is a representative member of the putative class. As of the commencement of this action, he is a resident and citizen of Illinois. Mr. Van Horne played in a total of 186 games as an offensive tackle for the Chicago Bears from 1981 to 1993. He was a member of the Bears' teams that won the 1985 Super Bowl and participated in the 1984, 1986 – 88, 1990 and 1991 playoffs. Like Mr. Newberry, Mr. Van Horne was a recipient of the Ed Block Courage Award. He played two games in the state of New York and 13 games in the state of California, where he experienced the provision of Medications described herein.

57. While playing in the NFL, Mr. Van Horne received hundreds of injections from doctors and pills from trainers, including but not limited to Novocain, Halcion, Percodan and NSAIDs such as Voltaren and Naproxen. Mr. Van Horne recalls that while he played for the Bears, the players were given Halcion and other Medications, along with beer, to help sleep at night. Also, bowls of Supac (a high-dose mixture of caffeine and aspirin) sat out in the locker rooms. Many Bears players took Supac with their morning coffee as part of the day's ritual.

58. Medical records provided by his NFL teams reveal that:

- In 1981 during the course of employment with the Chicago Bears, Mr. Van Horne was provided with Butazolidin;
- In 1983 during the course of employment with the Chicago Bears, Mr. Van Horne was injected with both Xylocaine and Aristospan;
- In 1986 during the course of employment with the Chicago Bears, Mr. Van Horne was provided with Naprosyn;
- In 1987 during the course of employment with the Chicago Bears, Mr. Van Horne was injected with both Xylocaine and Aristospan;
- In 1988 during the course of employment with the Chicago Bears, Mr. Van Horne was provided with Duricef and injected with Cortisone;

- In 1989 during the course of employment with the Chicago Bears, Mr. Van Horne was given an Epidural injection;
- In 1990 during the course of employment with the Chicago Bears, Mr. Van Horne was provided with Medrol;
- In 1991 during the course of employment with the Chicago Bears, Mr. Van Horne was injected with both Xylocaine and Aristospan.

59. Throughout the course of his career as a professional football player, Mr. Van Horne was also provided with other unspecified Medications including but not limited to non-steroidal anti-inflammatories, pain killers, injections, and muscle relaxers, including but not limited to Percodan, Voltarin, Prednisone, Halcion, Ambien, and Percocet, which lack detailed documentation. Mr. Van Horne does not recall the dosage of the Medications he received and, more often than not, the person providing the Medication to Mr. Van Horne did not advise him of the dosage and, to the extent the Medication was provided in a container (regardless of what type of container), the container did not identify the dosage. He never received the statutorily required warnings about side effects of any of the Medications.

60. Mr. Van Horne recalls that during a playoff game against the New York Giants on January 13, 1991, he could not lift his arm. Doctors and trainers knew he could not lift his arm so they gave him two Percodan for the first half and two Percodan for the second half to allow him to play. Often, he was not told what he was being given.

61. Medical records provided by the Chicago Bears reveal that Mr. Van Horne suffered multiple sprains and pulls of his ankles, hamstrings, neck and knees; has had both of his shoulders scoped twice; suffered a broken left thumb; had surgery on both Achilles tendons; has pins in his right pinky; tore his left bicep tendon (after he finished playing but due to wear and tear from playing); tore his right bicep tendon; and tore a ligament in his left elbow.

62. Mr. Van Horne believes that the foregoing injuries were aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications to him. Many of these injuries were known only generally to Mr. Van Horne at the time of their occurrence; the specific nature or details of the injuries were generally withheld from Mr. Van Horne. Moreover, Mr. Van Horne was never contemporaneously informed or knowledgeable that his injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications. Mr. Van Horne also states that he had more injuries than his memory or his medical records would indicate.

63. At this time, Mr. Van Horne seeks redress for the muscular/skeletal injuries and internal organ injuries discussed above and below.

64. Mr. Van Horne trusted and relied on the NFL's doctors and trainers and would not have taken the Medications in the manner and amount in which he did had the Defendant provided him with the information it was legally obligated to provide as discussed herein.

65. Plaintiff Ron Stone is a representative member of the putative class. As of the commencement of this action, he is a resident and citizen of California. Mr. Stone played in 173 games as an offensive lineman for the Dallas Cowboys from 1993 to 1995; the New York Giants from 1996 to 2001; the San Francisco 49ers from 2002 to 2003, and the Oakland Raiders from 2004 to 2005. He was a three-time Pro Bowl selection; two-time All-Pro selection, and two-time Super Bowl champion. He played 23 games in the state of New York and 31 games in the state of California, where he experienced the provision of Medications described herein.

66. While playing in the NFL, Mr. Stone received hundreds of injections from doctors and thousands of pills from trainers, including but not limited to NSAIDs such as Toradol,

Naprosyn and Indocin as well as Ambien, Percocet, and Cortisone.

67. Medical records provided by his NFL teams reveal that:

- **Dr. Warren King:** 2% Lidocaine solution was administered by Dr. Warren D. King on November 8, 2004 while Mr. Stone was employed by the Oakland Raiders:

- **Dr. Barrett L. Bryan:** Unspecified amount of Septra DS was given by Dr. Barrett L. Bryan on November 17, 2003 while Mr. Stone was employed by the San Francisco 49ers. Unspecified amount of Bactrim DS was given by Dr. Barrett L. Bryan on November 18, 2003 while he was employed by the San Francisco 49ers:

- **Dr. Michael F. Dillingham:** Unspecified amount of Indocin was prescribed by Dr. Michael F. Dillingham on October 6, 2003 while Mr. Stone was employed by the San Francisco 49ers:

- **Dr. Chris Beaulieu:** Unspecified amount of Lidocaine given by injection at some point prior to September 11, 2003 by Dr. Beaulieu while Mr. Stone worked for the San Francisco 49ers. . Unspecified amount of Decadron injected by Dr. Chris Beaulieu at some point prior to July 24, 2003 as noted by Dr. Michael F. Dillingham in a 49ers Recheck on July 24, 2003 while Mr. Stone was employed by the San Francisco 49ers. . Unspecified injection given by Dr. Chris Beaulieu on June 18, 2003 while Mr. Stone was employed by the San Francisco 49ers:

- **Dr. Lindsay:** Unspecified amount of Indocin started on January 21, 2003 given by Dr. Lindsay and noted by Dr. Michael S. Wall on January 23, 2003 while Mr. Stone was employed with the San Francisco 49ers:

- **Dr. James B. Klint:** 60mg Tordaol injected by Dr. James B. Klint on January 5, 2003 while Mr. Stone was employed by the San Francisco 49ers. . 60mg Toradol injected by Dr. James B. Klint on November 17, 2002 while Mr. Stone was employed by the San Francisco 49ers. . 60mg Toradol injected by Dr. James B. Klint on November 10, 2002 while Mr. Stone was employed by the San Francisco 49ers. . 60mg Toradol injected by Dr. James B. Klint on November 3, 2002 while Mr. Stone was employed by the San Francisco 49ers. . 60mg Toradol injected by Dr. James B. Klint on October 27, 2002 while Mr. Stone was employed by the San Francisco 49ers. . 60mg Toradol injected by Dr. James B. Klint on October 20, 2002 while Mr. Stone was employed by the San Francisco 49ers:

- **Dr. Barrett Bryan:** 60mg Toradol injected by Dr. Barrett Bryan on October 22, 2002 while Mr. Stone was employed by the San Francisco 49ers. 60mg Toradol injected by Dr. Barrett Bryan on September 15, 2002 while Mr. Stone was employed by the San Francisco 49ers;

- **Trainer Lazenby:** Unspecified amount of Indocin given by trainer Lazenby on October 2, 2003 while Mr. Stone was employed by the San Francisco 49ers.

Unspecified amount of Toradol injection given prior to October 7, 2003 as noted in the player treatment log by trainer Tanaka while Mr. Stone was employed by the San Francisco 49ers. Unspecified amount of Indocin given by trainer Lazenby on October 10, 2003 while Mr. Stone was employed by the San Francisco 49ers;

- **Trainer "M":** 8 tablets of 20mg Prednisone given by trainer "M" on July 23, 2002 while Mr. Stone was employed by the San Francisco 49ers. 000777. 28 capsules of 75mg Indocin capsule given by trainer "M" on August 12, 2002 while Mr. Stone was employed by the San Francisco 49ers. 5 tablets of 20mg Prednisone tablet given by trainer "M" on August 21, 2002 while Mr. Stone was employed by the San Francisco 49ers. 28 capsules of 75mg Indocin capsule given by trainer "M" on October 12, 2002 while Mr. Stone was employed by the San Francisco 49ers. 28 capsules of 75mg Indocin given by trainer "M" on October 23, 2002 while Mr. Stone was employed by the San Francisco 49ers. 4 tablets 7.5mg of Vicodin given by trainer "M" on December 22, 2002 while Mr. Stone was employed by the San Francisco 49ers. 28 capsules of 75mg Indocin given by trainer "M" on December 24, 2002 while Mr. Stone was employed by the San Francisco 49ers. . 1 tablet 7.5mg Vicodin given by trainer "M" on January 6, 2003 while Mr. Stone was employed by the San Francisco 49ers. 28 capsules of 75mg Indocin given by trainer "M" on January 23, 2003 while Mr. Stone was employed by the San Francisco 49ers. 28 capsules of 75mg of Indocin given by trainer "M" on May 3, 2003 while Mr. Stone was employed by the San Francisco 49ers. 28 capsules of 75mg of Indocin given by trainer "M" on May 17, 2003 while Mr. Stone was employed by the San Francisco 49ers. 42 capsules of 50mg Indocin X given by trainer "M" on August 17, 2003 while Mr. Stone was employed by the San Francisco 49ers. . 1 capsule 75mg Indocin given by trainer "M" on October 2, 2003 while Mr. Stone was employed by the San Francisco 49ers. . 1 capsule 75mg Indocin given by trainer "M" on October 11, 2003 while Mr. Stone was employed by the San Francisco 49ers. 2 tablets of 7.5/325mg Norco given by trainer "M" on September 14, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 capsule 75mg Indocin given by trainer "M" on September 27, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 tablet 7.5/325mg Norco given by trainer "M" on September 28, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 tablet 7.5/325mg Norco given by trainer "M" on October 12, 2003 while Mr. Stone was employed by the San Francisco 49ers. 2 tablets 7.5/325mg Norco given by trainer "M" on October 19, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 tablet 7.5/325mg Norco given by trainer "M" on October 26, 2003 while Mr. Stone was employed by the San Francisco 49ers. Norco given by trainer "M" on November 17, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 tablet 7.5/325mg. Norco given by trainer "M" on November 23, 2003 while Mr. Stone was employed by the San Francisco 49ers. Norco given by trainer "M" on December 14, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 tablet 7.5/325mg. Norco given by trainer "M" on December 21, 2003 while Mr. Stone was employed by the San Francisco 49ers. Prednisone given by trainer "M" on November 10, 2003 while Mr. Stone was employed by the San Francisco 49ers. 2 tablets of 7.5/325mg Norco given by trainer "M" on December

21, 2003 while Mr. Stone was employed by the San Francisco 49ers. 14 capsules 75mg Indocin SR given by trainer "M" on December 22, 2003 while Mr. Stone was employed by the San Francisco 49ers;

- **Trainer "R":** 1 injection 60mg Toradol given by trainer "R" on October 26, 2003 while Mr. Stone was employed by the San Francisco 49ers;

- **Trainer "BB":** 60mg Toradol injection given by trainer "BB" on September 7, 2003 while Mr. Stone was employed by the San Francisco 49ers. 60mg Toradol injection given by trainer "BB" on September 14, 2003 while Mr. Stone was employed by the San Francisco 49ers. 60mg Toradol injection given by trainer "BB" on October 5, 2003 while Mr. Stone was employed by the San Francisco 49ers. . 60mg Toradol injection given by trainer "BB" on October 12, 2003 while Mr. Stone was employed by the San Francisco 49ers. Toradol given by trainer "BB" on September 21, 2003 while Mr. Stone was employed by the San Francisco 49ers. 2 injections of 30mg Toradol given by trainer "BB" on September 28, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 injection 60mg Toradol given by trainer "BB" on October 19, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 injection 60mg Toradol given by trainer "BB" on November 2, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 injection 60mg Toradol given by trainer "BB" on November 17, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 injection 60mg Toradol given by trainer "BB" on November 23, 2003 while Mr. Stone was employed by the San Francisco 49ers. 1 injection 60mg Toradol given by trainer "BB" on December 21, 2003 while Mr. Stone was employed by the San Francisco 49ers. 4 tablets Septra DS 800-160 given by trainer "BB" on November 17, 2003 while Mr. Stone was employed by the San Francisco 49ers. 36 tablets Septra DS 800-160 given by trainer "BB" on November 18, 2003. 1 injection of 60mg Toradol given by trainer "BB" on December 14, 2003 while Mr. Stone was employed by the San Francisco 49ers. 4oz. Robitussin A/C given by trainer "BB" on November 28, 2003 while Mr. Stone was employed by the San Francisco 49ers;

- **Dr. Millard:** 1.5cc Decadron injected by Dr. Millard on a date prior to November 20, 2003 as reported by trainer Lazenby on November 20, 2003 in the player treatment history while Mr. Stone was employed by the San Francisco 49ers.

68. Mr. Stone further states that throughout the course of his career as a professional football player, he was provided with other unspecified Medications including but not limited to non-steroidal anti-inflammatories, pain killers, injections, and muscle relaxers, which lack detailed documentation. He does not recall the dosage of the Medications he received and, more often than not, the person providing the Medication to Mr. Stone did not advise him of the dosage and, to the

extent the Medication was provided in a container (regardless of what type of container), the container did not identify the dosage. He never received the statutorily required warnings about side effects of any of the Medications.

69. Mr. Stone received a serious elbow injury while playing with the Dallas Cowboys. Rather than recommend surgery, he was shot with painkillers. In addition, Mr. Stone tore his thumb while playing with the Giants. He was told that, if he were a baseball player he would have been out for the season but because he was a football player, it could wait until the off-season.

70. Stone also suffered from a MCL sprain to his knee while playing with the Raiders. Rather than sit out and rest, he was given shots in the affected area and pain pills, was re-taped, and was sent back out to play. He ultimately developed an MCL tear.

71. Medical records provided by his former teams reveal additional injuries sustained by Mr. Stone during his NFL career; those documents have already been provided by Mr. Stone at STONE_CONFID_000009-25, 000036-40, 000049-51, 000058-64, 000072-83, 000085-100, 000111, 000119, 000121, 000125-141, 000153-362, 000364-368, 000451-463, 00490-496, 000586, 000584, 000592, 000599, 000607-617, 000619, 000633, 000641, 000645-6, 000656, 000660, 000676, 000687-763, 000766-916; STONE_000173; STONE_CONF_0000001-5, 000009-11, 000017-25, 000041-46, 000049-51, 000056-64, 000072-83, 000090-97, 000111, 000119, 000121, 000125-141, 000586, 000584, 000592, 000599, 000607-617, 000619, 000633, 000641, 000645-6, 000656, 000660, 000676, 000687-763, 000766-916.

72. Mr. Stone believes that the injuries he received while playing in the NFL were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications to him. Many of the injuries identified above were known only generally to Mr. Stone at the time of their

occurrence; the specific nature or details of the injuries were generally withheld from Mr. Stone. Moreover, Mr. Stone was never contemporaneously informed or knowledgeable that his injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications. Mr. Stone also states that he had more injuries than his memory or his medical records would indicate.

73. At this time, Mr. Stone seeks redress for the muscular/skeletal injuries discussed above and below.

74. Mr. Stone trusted and relied on the NFL's doctors and trainers and would not have taken the Medications in the manner and amount in which he did had the Defendant provided him with the information it was legally obligated to provide as discussed herein.

75. Plaintiff Ron Pritchard is a representative member of the putative class. As of the commencement of this action, he is a resident and citizen of Arizona. Mr. Pritchard played in 106 games as a linebacker for the AFL/NFL Houston Oilers from 1969 to 1972 and for the Cincinnati Bengals from 1972 to 1977. He is a member of the College Football Hall of Fame. He played four games in the state of New York and eight games in the state of California, where he experienced the provision of Medications described herein.

76. While playing in the NFL, Mr. Pritchard received hundreds, if not thousands, of pills from trainers, including but not limited to NSAIDs, amphetamines, Valium, Butazolidin, and Quaaludes. Mr. Pritchard received pills on game days. He also received an injection of a numbing agent in his foot in a playoff game against the Raiders. And while Pritchard played with the Oilers, amphetamines in the form of yellow and purple pills were available in jars in the locker room for any and all to take as they saw fit. Mr. Pritchard describes a routine on the nights before games

where, either at dinner or during bed check, trainers would give players sleeping pills or downers. The next morning, they would be provided uppers for practice or the game.

77. Medical records provided by his NFL teams reveal that:

- From 1969 to 1971, during his employment with the Houston Oilers, Mr. Pritchard was provided with Valium, Barbiturates, and Amphetamines;
- In 1974, during his employment with the Cincinnati Bengals, Mr. Pritchard was provided with a Renografin injection;
- In 1975 during his employment with the Cincinnati Bengals, Mr. Pritchard was provided with Butazolidin and numbing agents;
- In 1976, during his employment with the Cincinnati Bengals, Mr. Pritchard was provided with cortisone injections.

78. Mr. Pritchard further states that throughout the course of his career as a professional football player, he was provided with other unspecified Medications including but not limited to non-steroidal anti-inflammatories, pain killers, injections, and muscle relaxers, which lack detailed documentation. He does not recall the dosage of the Medications he received and, more often than not, the person providing the Medication to Mr. Pritchard did not advise him of the dosage and, to the extent the Medication was provided in a container (regardless of what type of container), the container did not identify the dosage. He never received the statutorily required warnings about side effects of any of the Medications.

79. When Ron Pritchard was traded to the Raiders, the team's head doctor told him his knees were so bad that he could not keep playing. Nonetheless, the doctor told the team that Pritchard could play as long as he could cope with the pain.

80. Those injuries stemmed in part from a serious injury he had suffered the previous season with the Bengals that required major knee surgery. Six weeks after that surgery, he was back on the field playing against the Pittsburgh Steelers.

81. Medical records provided by his NFL teams reveal that Mr. Pritchard suffered the following injuries during his NFL career:

- In 1972, he suffered a bruised hip;
- In 1973, he suffered a right knee sprain; a fractured right hand; and a dislocated middle finger;
- In 1975, he suffered a concussion and fractured right foot;
- In 1976, he suffered left knee surgery, a left groin sprain, and surgery to remove a bone spur in his right foot; and
- In 1977, he underwent two more left knee surgeries along with surgery on his right foot and right elbow and suffered a fractured right hand; a right knee sprain; and a pulled right groin.

82. Mr. Pritchard believes that the foregoing injuries were aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications to him. Many of these injuries were known only generally to Mr. Pritchard at the time of their occurrence; the specific nature or details of the injuries were generally withheld from Mr. Pritchard. Moreover, Mr. Pritchard was never contemporaneously informed or knowledgeable that his injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications. Mr. Pritchard also states that he had more injuries than his memory or his medical records would indicate.

83. At this time, Mr. Pritchard seeks redress for the muscular/skeletal injuries discussed above and below.

84. Mr. Pritchard trusted and relied on the NFL's doctors and trainers and would not have taken the Medications in the manner and amount in which he did had the Defendant provided him with the information it was legally obligated to provide as discussed herein.

85. Plaintiff Jim McMahon is a representative member of the putative class. As of the commencement of this action, he is a resident and citizen of Arizona. Mr. McMahon played in 119 games as a quarterback for the Chicago Bears from 1982 to 1988; the San Diego Chargers in 1989; the Philadelphia Eagles from 1990 to 1992; the Minnesota Vikings in 1993; the Arizona Cardinals in 1994; and the Green Bay Packers from 1995 to 1996. He was named League Rookie of the Year in 1982; was selected to the Pro Bowl in 1985; was a two-time Super Bowl champion, and was named NFL Comeback Player of the Year in 1992. He played two games in the state of New York and twelve games in the state of California, where he experienced the provision of Medications described herein.

86. While playing in the NFL, Mr. McMahon received hundreds, if not thousands, of injections from doctors and pills from trainers, including but not limited to Percocet, Novocain injections, amphetamines, sleeping pills and muscle relaxers and NSAIDs such as Toradol. Medical records provided by his NFL teams reveal that:

- In 1984, during his employment with the Chicago Bears, Mr. McMahon was administered Marcaine and morphine;
- In 1985, during his employment with the Chicago Bears, Mr. McMahon was administered Naprosyn and prednisone;
- In 1986, during his employment with the Chicago Bears, Mr. McMahon was administered unidentified injections, lidocaine (including Xylocaine), triamterene (including Maxide), and diuretics;
- In 1988, during his employment with the Chicago Bears, Mr. McMahon was administered diclofenac (including Voltaren) and Vicodin;
- In 1989, during his employment with the San Diego Chargers, Mr. McMahon was administered aspirin (including Empirin), Anacin, Marcaine, lidocaine (including Xylocaine), dexamethasone (including Decadron), corticosteroids (including Aristospan), hydrocodone (including Damason), diclofenac (including Voltaren), Entex La, Naprosyn, phenoxymethylpenicillin (including penicillin VK), Benadryl, other anti-inflammatories, and other unidentified oral medications;

- In 1990, during his employment with the Philadelphia Eagles, Mr. McMahon was administered anti-inflammatories, phenylbutazone (including Butazolidin), muscle relaxants, cortisone, lidocaine, methylprednisone (including Depo Medrol), naproxen, and other painkillers;

- In 1991, during his employment with the Philadelphia Eagles, Mr. McMahon was administered hydromorphone (including Dilaudid), Zantac, Motrin, Marcaine, hyaluronidase (including Wydase), Medrol, analgesics, cortisone, Indocin, Novocain, Percocet, ammonium bituminosulfonate (including ichthammol), Naprosyn, valium, morphine, other anti-inflammatories, and other unidentified injections of medications;

- In 1992, during his employment with the Philadelphia Eagles, Mr. McMahon was administered Halcion, cefazolin, acetaminophen, docusate sodium (including DSS), naloxone (including Narcan), potassium, promethazine, antiemetics (including Reglan), Percocet, fentanyl (including Sublimaze), gentamicin, cortisone, Motrin, Zantac, and other unidentified intravenous, topical, and oral medications;

- In 1993, during his employment with the Minnesota Vikings, Mr. McMahon was administered Marcaine;

- In 1996, during his employment with the Green Bay Packers, Mr. McMahon was administered cefaclor.

87. Mr. McMahon further states that throughout the course of his career as a professional football player, he was also administered at various times hypnotics, Percocet, cyclobenzaprine (including Flexeril), Darvocet, phenylbutazone (including butes), Indocin, Aleve, ibuprofen, and other unidentified injections and envelopes of Medications. He does not recall the dosage of the Medications he received and, more often than not, the person providing the Medication to Mr. McMahon did not advise him of the dosage and, to the extent the Medication was provided in a container (regardless of what type of container), the container did not identify the dosage. Mr. McMahon states the he took more Medications than his memory or his medical records indicate. He never received the statutorily required warnings about side effects of any of the Medications.

88. Over the course of his career and 18 surgeries, Mr. McMahon became dependent on painkillers, a slow process that overtook him without him realizing it. At one point, he was taking as many as 100 Percocets per month, even in the off-season. After his playing career concluded, he was no longer able to obtain painkillers for free from the NFL and was forced to purchase over-the-counter painkillers to satisfy his need for medications. Over the course of that time, he has spent an extensive amount of money on such medications.

89. While McMahon was with the Bears, he received injections for six straight weeks in the 1984 season to cope with pain in his throwing hand and ten straight weeks in the 1986 season for pain in his right shoulder. In both instances, only later did he learn that he should have sat that time out and healed rather than mask the pain and return to play too early.

90. Medical records provided by his NFL teams reveal that Mr. McMahon he suffered the following injuries during his NFL career:

- In his hands, Mr. McMahon has suffered fractures, tendon avulsion, metacarpal injuries, ulnar instability, metacarpophalangeal joint degeneration, and carpal tunnel syndrome;
- In his back, Mr. McMahon has suffered strains, herniated and protruding discs, torn spinal cartilage, atrophy and hypertrophy of the ligamentum flavum, spinal canal narrowing, and fractures in his transverse vertebrae;
- In his kidneys, Mr. McMahon has suffered lacerations, contralateral renal trauma, hematuria, and renal cysts;
- In his knees, Mr. McMahon has suffered joint dislocation and effusion; sprains and twists; medial meniscus tears; patellar tendonitis; posterior cruciate ligament ruptures, arthritis, and disruption; chrondomalacia; chondral fractures; hyperextension; anterior cruciate ligament attenuation; kissing lesions; and degeneration;
- In his shoulders, Mr. McMahon has suffered dislocation, rotator cuff tears, tendonitis, impingement syndrome, Hill Sachs lesions, bone spurs, osteoarthritis, adhesive capsulitis, acromioclavicular joint degeneration; paralabral cysts; supraspinatus tears; and anterior glenoid labrum deformities;

- In his neck, Mr. McMahon has suffered sprains and strains; herniated, compressed, and protruding discs; cervical cord displacement; degeneration; and traction;
- In his hips, Mr. McMahon has suffered flexor strains;
- In his legs, Mr. McMahon has suffered pulled hamstrings and tibial contusions;
- In his ankles, Mr. McMahon has suffered calcaneofibular ligament sprains and osteoarthritis;
- In his chest, Mr. McMahon has suffered torn rib cartilage, rib fractures, strained rib muscles, and costochondral separation;
- In his elbows, Mr. McMahon has suffered contusions, tendonitis, lacerations, lateral epicondylitis, fractures, and degeneration;
- In his feet, Mr. McMahon has suffered from metatarsal sprains and tendonitis;
- In his arms, Mr. McMahon has suffered contusions and nerve damage;
- In his face, head, and brain, Mr. McMahon has suffered from headaches and cephalgia, concussions, jaw lacerations, and temporomandibular joint disorder;
- Mr. McMahon has also suffered from bowel and bladder problems; pneumonia; memory loss; ringing in his ears; insomnia; hay fever; hypertension; below-average manipulative dexterity and fine motor skills; impaired immediate and delayed free recall and recognition memory for complex visual information; below-average nonverbal problem solving and response inhibition skills; depression; anger and irritability; abnormal levels of phosphorous, triglycerides, high-density lipoprotein cholesterol, mucous threads, calcium oxalate and uric acid crystals, glucose, bilirubin, mean corpuscular hemoglobin, apolipoprotein B, and thyroid hormones; and an enlarged left atrium.

91. Mr. McMahon believes that the foregoing injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications to him.

92. Many of these injuries were known only generally to Mr. McMahon at the time of their occurrence; the specific nature or details of the injuries were generally withheld from Mr. McMahon. Moreover, Mr. McMahon was never contemporaneously informed or knowledgeable

that his injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications.

93. At this time, Mr. McMahon seeks redress for the internal organs and muscular/skeletal injuries discussed above and below.

94. Mr. McMahon trusted and relied on the NFL's doctors and trainers and would not have taken the Medications in the manner and amount in which he did had the Defendant provided him with the information it was legally obligated to provide as discussed herein.

95. Plaintiff Marcellus Wiley is a representative member of the putative class. As of the commencement of this action, he is a resident and citizen of California. Mr. Wiley played in 147 games as a defensive end for the Buffalo Bills from 1997 to 2000; the San Diego Chargers from 2001 to 2003; the Dallas Cowboys in 2004; and the Jacksonville Jaguars from 2005 to 2006. He was selected to the Pro Bowl in 2001. He played 38 games in the state of New York and 25 games in the state of California, where he experienced the provision of Medications described herein.

96. While playing in the NFL, Mr. Wiley received hundreds, if not thousands, of injections from doctors and pills from trainers, including but not limited to NSAIDs such as Toradol and Vioxx, opioids such as Hydrocodone, and sleeping pills such as Ambien.

97. Medical records provided by his NFL teams reveal that in 1999, he received Toradol after every game he played that season. Between 1999 and 2001, he received Vioxx.

98. Mr. Wiley further states that throughout the course of his career as a professional football player, he was provided with other unspecified Medications including but not limited to non-steroidal anti-inflammatories, Ambien, hydrocodone, pain killers, injections, and muscle relaxers, which lack detailed documentation. He does not recall the dosage of the Medications he

received and, more often than not, the person providing the Medication to Mr. Wiley did not advise him of the dosage and, to the extent the Medication was provided in a container (regardless of what type of container), the container did not identify the dosage. He never received the statutorily required warnings about side effects of any of the Medications.

99. These drugs were given to Mr. Wiley even when, because of potential dangerous complications, they were contraindicated for users with asthma, from which Mr. Wiley suffers. After games, these drugs were given to him along with alcohol. Mr. Wiley states that he has had asthma his whole life, something that any team doctor who reviewed his file should have known. Nonetheless, no doctor ever told him that he shouldn't take certain drugs, including but not limited to Toradol, while using his asthma inhaler.

100. While with the San Diego Chargers, named Mr. Wiley was diagnosed with a groin sprain. When he told the team doctor that the pain seemed more widespread than a simple groin sprain would produce, the doctor told him it was a bilateral groin sprain. Based on that diagnosis, Mr. Wiley thought his injury was one the NFL would expect him to play through. So he did. To do so, he received multiple injections of an unknown, pain-numbing substance throughout the remainder of the season.

101. After the season and still in pain, Mr. Wiley finally decided to seek a second opinion about his injury. Upon seeing a doctor unaffiliated with the NFL, Mr. Wiley learned that his "bilateral groin sprain" was in fact a severe tear of his abdominal wall, which required major surgery. The extent of the injury caused him lasting, intense pain – requiring even more injections and Medications to continue playing – and shortened his career.

102. Medical records provided by his NFL teams reveal that Mr. Wiley suffered the following injuries during his NFL career:

- In July 2000, he had surgery on his back;
- In September 2001, he had surgery for a fractured foot;
- In September 2002, he suffered a torn abdominal wall, for which he had surgery in March 2003; and
- In January 2004, he had a joint right labrum/rotator cuff surgery.

103. Mr. Wiley believes that the foregoing injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications to him. Many of these injuries were known only generally to Mr. Wiley at the time of their occurrence; the specific nature or details of the injuries were generally withheld from Mr. Wiley. Moreover, Mr. Wiley was never contemporaneously informed or knowledgeable that his injuries were caused, aggravated, extended, worsened, prolonged, exacerbated, intensified, perpetuated, protracted, or made permanent by the wrongful administration of Medications. Mr. Wiley also states that he had more injuries than his memory or his medical records would indicate.

104. At this time, Mr. Wiley seeks redress for the muscular/skeletal injuries and internal organ injuries discussed above and below.

105. Mr. Wiley trusted and relied on the NFL's doctors and trainers and would not have taken the Medications in the manner and amount in which he did had the Defendant provided him with the information it was legally obligated to provide as discussed herein.

106. Plaintiffs have attached as **Exhibit A** an excel spreadsheet with specific dates of games played by the Plaintiffs during their NFL careers. Exhibit A also lists the names of the Club doctors and trainers for each year through 2008 as provided by the Defendants during discovery in the Evans case.

## II. THE STATUTE OF LIMITATIONS ON THE CLAIMS ALLEGED HEREIN AGAINST THE NFL DID NOT START RUNNING UNTIL MARCH 2014.

107. Plaintiffs Richard Dent, Jeremy Newberry, Roy Green, J.D. Hill, Keith Van Horne, Ron Stone, Ron Pritchard, and James McMahon did not learn of the facts – particularly, the facts alleged *infra* in §§ 2 – 4 of the General Allegations Section of this Complaint – constituting the claims they have pled herein against the NFL until November 2013 when they spoke with Mel Owens regarding the same. Plaintiff Marcellus Wiley did not learn of the same until May 2014, when he first saw press coverage of this suit.

108. Plaintiffs exercised reasonable diligence to try to discover the facts at issue. For example, each Plaintiff spoke to team doctors and trainers[1] on at least a yearly basis, if not more regularly, about the type and/or amount of Medications being provided to them. Plaintiffs also discussed their injuries with the same doctors and trainers as they occurred and with doctors they visited after they finished their NFL careers for the injuries and ailments described herein. But no team doctor or trainer ever told any of the Plaintiffs about the side effects of the Medications they were being given, the dangers of "cocktailing" (mixing Medications), or of the League's involvement in the recordkeeping, handling, and distribution of the Medications. And while doctors they saw after their careers concluded did tell them that some of their ailments might be the result of the amount of Medications they took during their NFL careers, no doctor ever told them of the League's involvement in the recordkeeping, handling, and distribution of the Medications (nor would one expect them to be able to, as none of these doctors had any affiliation with the NFL).

[1] Exhibit A contains a list of doctors and trainers by year for each team for whom the Plaintiffs played.

109. Finally, neither the Tokish Study nor the Wash U/ESPN Study, discussed in greater detail *infra*, reveal any information relating to the facts identified *infra* in §§ 2 – 4 of the General Allegations Section of this Complaint, and thus by themselves would not have put Plaintiffs on notice of the claims alleged herein against the NFL. In any event, Plaintiffs are not doctors or otherwise active in the medical field and thus are not the type of persons to whom those studies would have been sent or who would simply review a medical study of which they were unaware. The Tokish Study also was not distributed in popular formats such as on TV or in a publication that the average person might read, such as *ESPN The Magazine*, and while the ESPN study was, Plaintiffs do not recall ever even hearing of it until after they first talked to Mel Owens in November 2013 or, in the case of Plaintiff Wiley, after he heard about the suit on TV.

110. Thus, despite their reasonable diligence, Plaintiffs were unable to make earlier discovery of the facts identified *infra* in §§ 2 – 4 of the General Allegations Section of this Complaint.

## III. THE NFL IS A RESIDENT OF THIS JUDICIAL DISTRICT.

111. Defendant NFL, which maintains its offices at 345 Park Avenue, New York, New York, is an unincorporated trade association consisting of separately-owned and independently-operated professional football teams that operate out of many different cities and states in this country. The NFL is engaged in interstate commerce in the business of, among other things, promoting, operating, and regulating the major professional football league in the United States.

112. As an unincorporated trade association of member teams, the NFL is a resident and citizen of each state in which its member teams reside, including California.

113. The NFL is a resident of the Northern District of California because it does business in this District, derives substantial revenue from its contacts with this District, and operates two franchises within this District, the Oakland Raiders and the San Francisco 49ers.

## JURISDICTION

114. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the proposed class consists of more than one hundred persons, the overall amount in controversy exceeds $5,000,000 exclusive of interest, costs, and attorney's fees, and at least one Plaintiff is a citizen of a State different from one Defendant. The claims can be tried jointly in that they involve common questions of law and fact that predominate over individual issues.

115. This Court has personal jurisdiction over the NFL because it does business in this District, derives substantial revenue from its contacts with this District, and operates two franchises within this District.

## VENUE

116. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is an entity with the capacity to sue and be sued and resides, as that term is defined at 28 U.S.C. §§ 1391(c)(2) and (d), in this District where it operates two franchises.

## INTRADISTRICT ASSIGNMENT

117. This matter has been assigned to the San Francisco Division.

## GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

### I. FEDERAL/STATE LAW PROVIDES A DUTY REGARDING CONTROLLED SUBSTANCES, PRESCRIPTION DRUGS, AND OVER-THE-COUNTER MEDICATIONS WITH WHICH THE NFL MUST COMPLY.

#### A. Given the Potential Significant Detrimental Impact, Congress Imposed A Sophisticated Criminal/Regulatory Regime on Controlled Substances and Prescription Medications.

118. United States law imposes a sophisticated statutory regime that regulates the dispensation of certain medications that carry a greatly-enhanced risk of abuse and addiction ("controlled substances") and criminalizes violations of such regulations. This regime protects against the dangers of abuse and addiction inherent in the use of controlled substances such as opioids and other powerful painkillers. This regulatory regime applies to anyone involved in the dispensation of these substances, from a physician operating a solo medical practice to a multibillion-dollar machine such as the NFL.

**1. The Controlled Substances Act Criminalizes the Dispensation and Possession of Medications that the NFL Routinely Gives Players.**

119. In 1970, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act (the "Act"). Title II of this Act, codified as 21 U.S.C. § 801, *et seq*., is known as the Controlled Substances Act or the "CSA." The CSA acknowledges that while "controlled substances" "have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare," 21 U.S.C. § 801(1), the risk of addiction associated with such substances requires a sophisticated regime regulating their manufacture, dispensation, importation, use, distribution, and possession.

120. Regulation and enforcement of the CSA is delegated to the Food and Drug Administration ("FDA"), the Drug Enforcement Administration ("DEA"), and the Federal Bureau of Investigation ("FBI").

121. The CSA[2] organizes controlled substances into five categories, or schedules, that the DEA and FDA publish annually and update on an as-needed basis. The controlled substances in each schedule are grouped according to accepted medical use, potential risk for abuse, and

[2] Medications regulated by the CSA also constitute prescription medications under the Food, Drug and Cosmetic Act, thereby requiring a prescription before they can be dispensed.

psychological/physical effects.

122. Abuse of Schedule IV controlled substances "may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III." 21 U.S.C. § 812(b)(4)(C). Among the medications listed as Schedule IV controlled substances are Ambien, Valium, Librium and Halcion.

123. Abuse of Schedule III controlled substances "may lead to moderate or low physical dependence or high psychological dependence." 21 U.S.C. § 812(b)(3)(C). Among the medications listed as Schedule III controlled substances are opioids and NSAIDs such as Vicodin[3] and acetaminophen with codeine.

124. Schedule II controlled substances, which include cocaine and heroin, have "a high potential for abuse" that "may lead to severe psychological or physical dependence." 21 U.S.C. § 812(b)(2). Among the Schedule II controlled substances the NFL gave its players are opioids such as Codeine and Oxycodone and stimulants like Amphetamines and Methamphetamines.

125. Under authority provided by the CSA at 21 U.S.C. § 821, the United States Attorney General can promulgate (and has promulgated) regulations implementing the CSA.

[3] On October 24, 2013, the FDA announced it would recommend to the Department of Health and Human Services that hydrocodone products such as Vicodin should be re-classified as Schedule II medications. On August 22, 2014, the Drug Enforcement Agency published its Final Rule in the Federal Register to reschedule hydrocodone products to Schedule II of the CSA. A copy of the final rule can be found here: http://www.gpo.gov/fdsys/pkg/FR-2014-08-22/pdf/2014-19922.pdf (last visited Nov. 26, 2018).

**a. The CSA's Regulatory Regime.**

126. The CSA contains a number of provisions governing the dispensation,[4] use, distribution, and possession of controlled substances. Under the CSA, "[e]very person who manufactures or distributes any controlled substance[,]" or "who proposes to engage in the manufacture or distribution of any controlled substance[,] … [or] who dispenses, or who proposes to dispense, any controlled substance," shall obtain from the Attorney General a registration "issued in accordance with the rules and regulations promulgated by [the Attorney General]." *Id.* at § 822(a)(1)-(2).

127. To distribute Schedule II or III controlled substances, applicants must establish that they: (a) maintain "effective control[s] against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;" (b) comply "with applicable State and local law;" and (c) satisfy other public health and safety considerations, including past experience and the presence of any prior convictions related to the manufacture, distribution, or dispensation of controlled substances. *Id.* at § 823(b).

128. The CSA mandates that controlled substances may be legally dispensed only by a practitioner or pursuant to a practitioner's prescription (as similarly established by 21 U.S.C. § 353) and within the purview of the practitioner's registration. *Id.* at § 829.

129. Moreover, Schedule II substances cannot be re-filled, *see id.* at § 829(a), while Schedule III and IV substances cannot be re-filled more than six months after the initial dispensation or more than five times "unless renewed by the practitioner." 21 U.S.C. § 829(b).

130. Only those prescriptions "issued for a legitimate medical purpose by an

[4] The CSA defines the dispensation of a controlled substance as the delivery of a controlled substance "to an ultimate user … by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance[.]" 21 U.S.C. § 802(10).

individual practitioner acting in the usual course of his professional practice" may be used to legally dispense a controlled substance under § 829(b). 21 C.F.R. § 1306.04(a) (2013).

131. The CSA also establishes specific recordkeeping requirements for those registered to dispense controlled substances scheduled thereunder. For example, except for practitioners prescribing controlled substances within the lawful course of their practices, the CSA requires the maintenance and availability of "a complete and accurate record of each substance manufactured, received, sold, delivered, or otherwise disposed." 21 U.S.C. § 827(c).

132. The CSA's recordkeeping regulations require a person registered and authorized to dispense controlled substances to maintain records regarding both the substances' prior manufacturing and the subsequent dispensing of the substance. Such records must include the name and amount of the substances distributed and dispensed, the date of acquisition and dispensing, certain information about the person from whom the substances were acquired and dispensed to, and the identity of any individual who dispensed or administered the substance on behalf of the dispenser. 21 C.F.R. § 1304(22)(c) (2013).

133. Beyond specific recordkeeping, all registrants "shall [also] provide effective controls and procedures to guard against theft and diversion of controlled substances." 21 C.F.R. § 1301.71(a) (2013). Depending on the schedule assigned to a particular controlled substance, such substances must be securely locked within a safe or cabinet or other approved enclosures or areas. *Id.* at §§ .72(b) & .75(b) (2013). Any theft or significant loss of controlled substances must be reported to the DEA upon discovery of the theft or loss. *Id.* at § .74(c) (2013).

**b. <u>The CSA's Criminal Regime</u>.**

134. The CSA enacted a comprehensive criminal regime to penalize violations of its rules and regulations.

135. Specifically, Part D of the CSA proscribes a series of "Prohibited Acts" that run the gamut from trafficking of controlled substances to their unlawful possession.

136. For example, it is unlawful for any person to knowingly or intentionally "distribute, or dispense, or possess with intent to … distribute, or dispense, a controlled substance[]" in violation of the CSA. 21 U.S.C. § 841(a)(1).

137. Each and every single violation of this section that involves a "Schedule III" controlled substance is a Federal felony subject to a variety of penalties, including but not limited to a term of imprisonment of up to ten years (15 years if the violation results in death or serious bodily injury) and a fine of $500,000 if the violator is an individual to $2,500,000 if the violator is not an individual (for first offenses). *Id*. at § 841(b)(1)(E)(i). These penalties are ***doubled*** if the violator has a prior conviction for a felony drug offense. *Id*. at §841(b)(1)(E)(ii).

138. It is also unlawful for anyone with a CSA registration to:

- "distribute or dispense a controlled substance" without a prescription or in a fashion that exceeds that person's registered authority. *Id*. at § 842(a)(1)-(2);
- distribute a controlled substance in a commercial container that does not contain the appropriate identifying symbol or label, as provided under 21 U.S.C. § 321(k), or to "remove, alter, or obliterate" such an identifying symbol or label. *Id*. at §§ 825, 842(a)(3)-(4); or
- "refuse or negligently fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required" under the CSA. *Id*. at § 842(a)(5).

A person who violates any of these provisions is subject to a minimum civil penalty up to $25,000. *Id.* at § 842(c)(1)(A).

139. It is also unlawful for a person "knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order,

from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized" under the CSA. *Id*. at § 844(a).

140. A violation of this provision is subject to a term of imprisonment of up to one year and a fine of up to $1,000 for a first offense. *Id*. Multiple violations of this provision result in a term of imprisonment of up to three years and a fine of at least $5,000. *Id*.

141. Furthermore, "[a]ny person who attempts or conspires to commit any offense" described above "shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy." *Id*. at § 846.

142. Except as authorized by the CSA, it is unlawful to "knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of distributing or using controlled substance" or to "manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance." *Id.* at § 856(a). A violation of this section results in a term of imprisonment of up to 20 years and a fine of $500,000 if the violator is an individual or up to $2,000,000 if the violator is not an individual. *Id*. at § 856(b).

143. For decades, the NFL's lack of appropriate prescriptions, failure to keep proper records, refusal to explain side effects, lack of individual patient evaluation, proper diagnosis and attention, and use of trainers to distribute Schedule II and III controlled substances to its players, including Plaintiffs, individually and collectively violate the foregoing criminal and regulatory regime. In doing so, the NFL not only left its former players injured, damaged and/or addicted, but also committed innumerable violations of the CSA.

**2. The Food, Drug, and Cosmetic Act Prohibits the Dispensation of Controlled Substances Without a Prescription.**

144. A significant complement to the foregoing statutory regime is the Food, Drug, and Cosmetic Act (the "FDCA"). Enacted by Congress in 1938 to supplant the Pure Food and Drug Act of 1906, the FDCA prohibits the marketing or sale of medications in interstate commerce without prior approval from the FDA, the agency to which Congress has delegated regulatory and enforcement authority. *See* 21 U.S.C. § 331(d).

145. The FDCA has been regularly amended since its enactment. Most notably, changes in 1951 established the first comprehensive scheme governing the public sale of prescription pharmaceuticals as opposed to "over-the-counter" medications. The purpose of this regulatory regime was to ensure that the public was protected from abuses related to the sale of powerful prescription medications.

146. Pursuant to this amendment, the FDCA provides that if a covered drug has "toxicity or other potentiality for harmful effect" that makes its use unsafe unless "under the supervision of a practitioner licensed by law to administer such drug[,]" it can be dispensed only through a written prescription from "a practitioner licensed by law to administer such drug." 21 U.S.C. § 353(b)(1). Any oral prescription must be "reduced promptly to writing and filed by the pharmacist" and any refill of such a prescription must similarly be authorized. *Id*.

147. Jurisprudence interpreting the FDCA establishes that a proper "prescription" under the FDCA shall include directions for the preparation and administration of any medicine, remedy, or drug for an actual patient deemed to require such medicine, remedy, or drug following some sort of examination or consultation with a licensed doctor. Conversely, a "prescription" does not mean any mere scrape of paper signed by a doctor for medications.

148. As a result, a key element in determining whether or not § 353(b)(1) has been

violated is the existence (or non-existence) of a doctor-patient relationship from which the "prescription" was issued.

149. The FDCA further provides that the prescribing medical professional shall be the patient's primary contact and information source on such prescription medications and their effects. *Id*. at §§ 352, 353. As such, regulations promulgated by the FDA require medical professionals to provide warnings to patients about such effects.

150. Dispensers violate the FDCA if they knowingly and in bad faith dispense medications without a prescription or with the intent to mislead or defraud. 21 U.S.C. §§ 331(a) & 333(a)(2).

151. Dispensing a drug without a prescription, as NFL doctors and trainers regularly did, results in the drug being considered "misbranded" while it is held for sale. *Id* at § 353(b)(1). The FDCA prohibits: (a) introducing, or delivering for introduction, a misbranded drug into interstate commerce; (b) misbranding a drug already in interstate commerce; or (c) receiving a misbranded drug "in interstate commerce, or the delivery or proffered delivery thereof for pay or otherwise[.]" 21 U.S.C. §§ 331(a) – (c).

152. It is also an FDCA violation to provide, as NFL doctors and trainers routinely did, a prescription drug without the proper FDA-approved label. *Id.* at § 352; 21 C.F.R. §§ 201.50 – 201.57 (2013). Stringent regulations dictate specific information that must be provided on a prescription drug's labeling, the order in which such information is to be provided, and even specific "verbatim statements" that must be provided in certain circumstances, such as the reporting of "suspected adverse reactions." *See generally* 21 C.F.R. §§ 201.56, .57, .80 (2013).

153. For instance, labeling for any covered medication approved by the FDA prior to June 30, 2001 must include information regarding its description, clinical pharmacology,

indications and usage, contraindications, warnings, precautions, adverse reactions, drug abuse and dependence, overdosage, dosage and administration, and how it was supplied, to be labeled in this specific order. *See* 21 C.F.R. § 201.56(e)(1) (2013).

154. Such information must be provided under the foregoing headings in accordance with 21 C.F.R. §§ 201.80(a)-(k) (2013). For example, labeling regarding a covered drug's tendency for abuse and dependence "shall state the types of abuse [based primarily on human data and human experience] that can occur with the drug and the adverse reactions pertinent to them." *See id.* at § 201.80(h)(2) (2013).

155. Covered medications approved by the FDA after June 30, 2001 are subject to even more stringent labeling requirements. *See generally* 21 C.F.R. §§ 201.56(d)(1); .57(a) – (c) (2013). For instance, labeling for such covered drugs must provide: (a) if the covered drug is a controlled substance, the applicable schedule; (b) "the types of abuse that can occur with the drug and the adverse reactions pertinent to them[;]" and (c) the "characteristic effects resulting from both psychological and physical dependence that occur with the drug and must identify the quantity of the drug over a period of time that may lead to tolerance or dependence, or both." *See* 21 C.F.R. § 201.57(c)(10) (2013).

156. The NFL's use of trainers to distribute Medications, lack of appropriate prescriptions, failure to keep records, refusal to explain side effects, and lack of individual patient care, individually and collectively, violate the FDCA.

**B. All 50 States Plus the District of Columbia Have Corresponding Laws That Regulate Controlled Substances and Prescription Medications.**

157. The Act expressly contemplates that the States will implement their own laws regulating controlled substances and prescription medications. All states do have such laws. Many states' laws are stricter than the CSA. For example, California has enacted the Pharmacy Law,

Calif. Bus. & Prof. Code §§ 4000, *et seq.* that extensively regulates prescription drugs such as Toradol as well as the Sherman Food, Drug and Cosmetic Laws, Calif. Health & Safety Code §§ 109910 & 110045, which largely mirrors the FDCA.

158. Since the NFL has a duty to operate its business in a lawful manner, the foregoing federal laws and regulations apply to the League and, to the extent the League operates in a state with corresponding laws, those state laws apply to the League too.

## II. THE LEAGUE VOLUNTARILY UNDERTOOK A DUTY TO ITS PLAYERS WITH REGARD TO THE ADMINISTRATION OF MEDICATIONS.

159. The League implemented its initial drug program in 1973 under the direction of Dr. Walter F. Riker. From the outset, the focus of that program was on the administration and distribution of the Medications at issue here.

160. In 1984, Dr. Forrest Tennant took over Dr. Riker's responsibilities and continued the program he had put in place.

161. In 1990, the NFL's drug program split. Responsibility for steroid oversight went to Dr. John Lombardo whereas the Dr. Lawrence Brown was tasked with oversight of the administration of the Medications. Dr. Brown continues to oversee that program today.

162. Regardless of whether it was under the watch of Dr. Riker, Tennant or Brown, since its inception, this program has required teams and their doctors to report to the NFL regarding the administration of Medications while the League in turn has undertaken the duty of overseeing that administration.

163. For example, at some point, the League began auditing the clubs' compliance with the foregoing laws. Documents produced in *Evans* include hundreds, if not thousands, of such audits for every club stretching back until at least 1990 in which the clubs were required to report

to the League the types of drugs being administered, the amounts in which they were administered, violations of applicable laws they encountered, and other information required by the League.

164. Moreover, the League has funded studies relating to the Medications. For example, in 2012, Dr. Mathew Matava, team doctor for the St. Louis Rams and then president-elect of the NFL Physicians Society ("NFLPS"), formed a task force to examine the use of Toradol and provide recommendations regarding the future use of the substance in the NFL: Matthew Matava *et al.*, "Recommendations of the National Football League Physician Society Task Force on the Use of Toradol Ketorolac in the National Football League," 4 *Sports Health* 5: 377-83 (2012) (hereinafter "Task Force Recommendations").

165. In an e-mail dated February 12, 2012, Dr. Matava described their "task [as requiring them] to formulate a 'best practice' recommendation for the other members of the NFL Team Physician Society and to Commissioner Goodell."

166. The Task Force was the brainchild of Dr. Yates, who appointed an *ad hoc* committee to look into the issue because of negative press the NFL was receiving. Funding for the work came from the League, according to Dr. Yates. Dr. Matava, and possibly Dr. Yates, met with Commissioner Goodell in New York to discuss the *ad hoc* Toradol committee prior to it being formed in or around January 2012.

167. The task force recognized that a decade had passed since the only other study to look at Toradol in professional sports took place. JM Tokish, *et al.*, "Ketorolac Use in the National Football League: Prevalence, Efficacy, and Adverse Effects," *Phys Sportsmed* 30(9): 19-24 (2002) (hereinafter the "Tokish Study").

168. The Tokish Study sent questionnaires to the head team physician and the head athletic trainer of each of the NFL's 32 teams, with 30 of them responding. In addition to finding

that 28 of those 30 teams administered Toradol injections during the 2000 season, the Tokish Study also found the following:

- Of the 28 teams that used the drug, an average of 15 players were given injections (this answer ranged from 2 players to 35 players); and
- Twenty-six of the 28 teams used Toradol on game day.

169. One team had a policy of no use within 48 hours of games, and another team had a policy of no use within 12 hours of games.

170. Toradol has the potential for severe complications such as bleeding and renal damage. In fact, the two teams that did not use Toradol injections had strong policies against its use, citing potential complications, including renal failure and increased risk of bleeding.

171. Some players did experience Toradol complications; six teams reported at least one adverse outcome relating to Toradol use. Specifically, four teams noted muscle injury, one documented a case of gastrointestinal symptoms that resolved with cessation of Toradol use, and one reported that a player had increased generalized soreness one day after injection.

172. The Tokish Study concluded that "given that bleeding times are prolonged by 50% 4 hours after a single [shot of Toradol use] on game day may deserve reconsideration in contact sports." The study then called for additional investigation and sought the development of standardized guidelines for Toradol use in athletes.

173. A memorandum entitled "Issues for the NFL Team Physician" from the KC Orthopedic Institute and dated February 18, 2003 states: "Off-label use of Medications – There are a large number of NFL teams that use Toradol in an off-label method. It is designed to be used for the treatment of a painful condition as a short course of either IM or IV administration, followed by oral administration for a maximum of 5 days consecutively. Most of the team doctors use it as a method to limit pain before the onset or as a chronic treatment with players receiving weekly

doses. I have spoken to the company in the past and the use as a weekly dosing is off-label. Chronic and long-term use is not approved. Your patient needs to be advised of this."

174. On the same day, Brad C. Brown, PFATS secretary, kept the minutes of PFATS winter meeting held at the Combine in Indianapolis. Those minutes reflect that Dean Kleinschmidt reported to the group assembled (open to all NFL trainers) on the meeting of the Drug Abuse Committee as follows: "Those athletic trainers that have to contend with the NFL drug audit, the committee has determined that the special care given to toradol and Vicodin in the reporting will no longer be necessary as, these two drugs have not shown any significant problem." In other words, at the same time the Tokish Study is calling for more study and the KC document is advising of risks associated with Toradol, the NFL collective decided to stop reporting about it.

175. Over a decade later, the Matava task force determined that standardized guidelines still had not been implemented and that Toradol use had increased in the NFL during the intervening period.

176. Therefore, the purpose of the task force was to "[p]rovide NFL physicians with therapeutic guidelines on the use of [Toradol] to decrease the potential risk of severe complications associated with NSAIDs – in particular, the increased risk of hemorrhage resulting from a significant collision or trauma."

177. The task force recommended that:

- ***Toradol should not be administered prophylactically*** "prior to collision sports such as football, where the risk of internal hemorrhage may be serious" in light of the FDA's admonition "that [the drug] not be used as a prophylactic medication prior to major surgery or where significant bleeding may occur."

- ***Toradol should not be used "to reduce the anticipated pain, during, as well as after competition"*** because "[t]he perception of NFL players getting 'shot up' before competition has shed an unfavorable light on the NFL as well as on team physicians who are perceived as being complicit with the players' desire to play at all costs, irrespective of the medical consequences."

- If Toradol is to be administered, ***it should be given orally and not through the more aggressive injections/intramuscularly***. The Task Force found that the greater risks associated with injections – infections, bleeding, and injury to adjacent structures – combined with quicker onset of the drug when taken orally "favors the oral route of administration."

178. In addition to audits and studies, and in pace with public awareness of the prevalence of drugs has increased, the NFL imposed a number of mandated procedures to control the drug distribution system. The NFL has required that all drugs be locked in a closet or similar locked storage facility, as mandated for years by federal law. The NFL has also required that doctors register the Clubs' facility as a storage facility for controlled substances and prescription medication, as doctors who had been distributing drugs out of locker rooms at club facilities, including away game facilities, that had not been registered by that doctor with the DEA was illegal. The NFL has also tried to require all Clubs to purchase and utilize tracking software created by a firm called SportPharm, many of which did. SportPharm collects the data and retains it in the event the NFL is questioned about their drug distribution by the DEA or an appropriate state agency.

179. The NFL also exerts control over each Club's relationship with its medical marketing partners and its Club doctors. Clubs are obligated to review any proposed medical sponsorship arrangement with the NFL in advance of finalizing any such agreement. The Clubs' hiring of their doctors must also be approved by the League to ensure that the marketing arrangement is not mandating the hiring of its doctors.

180. The NFL also exerts control over, and constant monitoring of, the storage and administration of controlled substances and prescription drugs through their agent, the NFL Security Office. NFL Security Office personnel regularly meet and consult with club officials, including doctors and trainers, and conduct regular audits of club record keeping and facilities.

181. The NFL imposed a uniform Toradol waiver beginning with the 2010 season, a sample copy of which is attached hereto as **Exhibit B**. Every player on each Club was asked to sign the waiver, which is identical for each Club.

182. Finally, the League funded the current "visiting team medical liaison program," as testified to by Dr. Yates, whereby independent local physicians provide controlled substances to visiting teams as needed. According to Dr. Yates, the impetus for that program, which went into place in 2015, were raids conducted by the DEA in October 2014 of various clubs to see if they were still illegally traveling with controlled substances. As the Clubs were tipped off by a DEA employee in advance of the raids, not surprisingly, none of them were carrying controlled substances at the time.

## III. THE LEAGUE HAS KNOWN OF THE PROBLEMS IDENTIFIED HEREIN FOR DECADES.

183. NFL officials regularly meet with team personnel, including doctors and trainers. The trainers are mandated by the NFL to meet on at least a yearly basis while the doctors meet at least annually at the Combine. These regular meetings, which have been taking place for decades, provide the NFL with the chance to share information with the Clubs to which the public is not privy. And as detailed herein, e-mails are sent *en masse* to all trainers or doctors about medications and trainers or doctors from one team communicate with trainers or doctors from other teams about medications via e-mail (*see, e.g.*, the Dr. Chao e-mail to the New Orleans Saints trainer identified herein) or, as Drs. Rettig and Matava testified to, before and after games. The Commissioner attends NFLPS meetings; NFLPS executive committee members attend owners' meetings and NFL Management Council meetings, and lurking in the background are Drs. Brown and Pellman, the NFL doctors who supervise the Club doctors.

184. The NFLPS is governed by an executive committee that regularly interacts with the League. For example, Dr. Anthony Yates (Steelers' doctor), who served on that committee from 2000 to 2015 and is a former NFLPS president, testified at his deposition that Elliott Pellman, in his capacity as medical advisor to the League, was a regular attendee of NFLPS executive committee meetings. He further testified that Dr. Brown also attended such meetings, including, for example, the February 11, 1995 meeting at the Westin Hotel in Indianapolis and the February 7, 1998 meeting at the Hyatt Regency Hotel in Indianapolis. Other League officials attended these meetings too, including Ed Teitge, who gave a 30 minute presentation on labor relations in the NFL at the aforementioned 1998 meeting; Adolpho Birch, who attended the February 21, 2003 meeting at the Westin Hotel in Indianapolis (along with Dr. Brown), and Commissioner Goodell, who attended the February 23, 2012 NFLPS executive board meeting.

185. Dr. Yates also testified that Dr. John York, an owner of the San Francisco 49ers who was also chairman of the owners' health and safety committee, would attend NFLPS meetings and events, including the 2013 executive committee meeting at the Combine. Dr. Yates called Dr. York "an important resource to and advocate for the team physicians and athletic trainers for all 32 clubs" at the 2013 NFLPS business meeting.

186. He further testified that he attended "one or two" owners' health and safety committee meetings and was present at the League's New York offices once or twice a year while he was NFLPS president.

187. Dr. Matava (Rams' doctor) testified that, while president, he too attended owners' health and safety committee meetings and regularly visited the League's New York offices for meetings. Both he and Dr. Yates testified that, while serving as president of the NFLPS, they

attended, and gave presentations regarding medications (including Toradol) at, owners' meetings, the Toradol meeting having occurred in March 2013.

188. Moreover, the League, through Dr. Brown and the Club physicians, has audited the use of controlled substances since the late 1970s according to documents produced by Dr. Brown. For example, a March 1, 2013 memorandum prepared by Dr. Brown (in which he is styled as "Medical Advisor National Football League") for Adolpho Birch, Senior Vice President of Law and Labor Policy for the NFL Management Council, covers the then nearly 40 year history of the NFL Prescription Drug Program and Protocol, which apparently had "evolved … dramatical[ly] in the last two years" (which happen to be the two years after the DEA investigated the Clubs, as discussed herein). In that memorandum, Dr. Brown notes that the players' "health and safety" were major reasons for the existence of the Prescription Drug Program and Protocol from its inception through the time that memorandum was prepared.

189. In a final report published May 30, 1990, Forest Tennant, the League's Drug Advisor, notes in relevant part that audits conducted by the League of the Clubs' use of controlled substances reveal in relevant part that "[s]ome Clubs don't seem to know which drugs are controlled substances, and some don't apparently understand the necessity (and law) to keep dispensing logs and an internal audit. A review of Clubs logs and internal audits … reveal excellent tracking by some … and some other Clubs do not have enough documentation to know if controlled substances are accounted for." An audit from the very next year states that "[m]any teams lack evidence of a copy of the current DEA registration for each prescribing physician" and that a "significant number of teams store/stock controlled substances in devices of questionable compliance to governmental regulations."

190. In a drug audit dated October 24, 1995 for the Philadelphia Eagles that went to Dr. Brown (who took over from Dr. Tennant) it was noted that the Eagles' Dr. Torg used the athletic trainer's name, rather than the player's name, on prescriptions.

191. In 1997, one General Manager said that painkiller abuse was "one of the biggest problems facing the league right now." He said the League was trying to fix the problem, but described painkiller use among players as "the climate of the sport."

192. At the NFLPS business meeting held on February 7, 1998, Dr. Lawrence Brown reported to the NFLPS that, during the last audit, at least "5 teams were in noncompliance with controlled substances" (and he fails to make mention of what, if anything, would be done to bring those teams into compliance).

193. And in documents produced by Dr. Brown in *Evans*, he identified several instances in which he noted that trainers were dispensing prescription drugs in violation of the law:

- An April 6, 1999 letter to Dave Kendall (Chiefs trainer);
- An April 7, 1999 letter to Brad Brown (Titans trainer); and
- An April 25, 2000 letter to Paul Sparling (Bengal trainer).

194. A document produced by Dr. Brown titled "NFL Prescription Drug Program and Protocol" and dated April 1999 states that it was drafted "to comply with regulations of the Federal Drug Enforcement Administration (DEA) as they apply to controlled substances." The program's main purpose was "to provide guidelines for the utilization of all prescription drugs provided to players and team personnel by physicians and other healthcare providers and associated the NFL clubs" and "to ensure the appropriate handling (purchase, distribution, dispensing, administration and recordkeeping)." The memorandum noted that "[t]he focus of the Program will remain on diuretics, non-steroidal anti-inflammatory drugs ... and all controlled drugs" and the Program's

emphasis was placed on "(1) the on-site audit, (2) the initial inventory and reconciliation reports, and (3) procedures used to provide controlled drugs to team personnel, to obtain prescription drugs from pharmacies, and to secure controlled drugs." The NFL Prescription Drug Program also provided the guidelines for securing controlled substances and referred to protocol for the travel container, which stated, "At all times, the travel container should be in the possession of a physician or an athletic trainer when not in a team's safe or in a locked equipment trunk/locker. Access to the locked trunk/locker should be limited to a team physician and/or athletic trainer while on the sidelines during practice or during a game. From a security perspective, a prudent definition of possession means within the effective immediate control, *i.e.*, reasonable distance and sight lines, of the physician or the trainer. This is relevant on the road as well as when a team is at home."

195. Records from a February 21, 2003 NFLPS business meeting (open to all members of the NFLPS) reflect that Dr. Brown "suggested that we work with the AOSSM [American Orthopedic Society for Sports Medicine] to develop a standard of treatment for professional athletes since we are 'outside the lines.'"

196. On March 28, 2007, Jim Anderson, the head trainer for the Rams, sent an e-mail to all the Clubs head trainers in which he summarized the 2007 Drugs of Abuse Committee Meeting and stated that: "Based on 2006 auditing results, Dr. Brown stressed the importance of properly labeled medications with current expiration dates and lot numbers. Some teams audited last fall were noted to have been adding new pill counts to old bottles already on the shelf. Each new prescription ordered for team use should be kept in its original container and not combined with pills in other containers."

197. In an e-mail dated January 7, 2008 to various team doctors and personnel, Minnesota Vikings head trainer Eric Sugarman stated "Here is week 17's fiasco ……. The following items did not match up this week. 1. Total of 16 Ambien given out was recorded – however only 11 Ambien were missing from the kit. 2. Total of 21 Toradol shots were recorded – however only 20 Toradol shots were missing from the kit. 3. Total of 1 Diphenhydramine shots were missing with no record of dispensing. There have been several times where the drug sheet and restock sheet didn't match but it was easily reconciled that day. There have been two incidences of drugs that have not been accounted for at all. 1. 12/17/07 – Missing all 12 pills of cyclobenzaprine. 2. 12/23/07 – Missing all 10 pills of SMZ/TMP 800-160 mg. In the case of the SMZ/TMP the whole bottle itself was missing from the kit."

198. The Falcons' memorandum referenced above also stated in relevant part that: "On 4 NFL regulated medications (medication that we have to report to the NFL on our reports/medication that is counted during the on-site audit), our numbers do not match our League summary report (Norco, Lomotil, Ambien CR, Celebrex 400mg). Also countless antibiotics and non-regulated drugs were missing or not accounted for. Controlled drugs, including narcotics, were kept in an unlocked case, outside the safe. This has been addressed and all controlled drugs are now in the safe as mandated by the NFL and State Laws. ***Strongly suggested by the NFL that the Head Team physician be present for the on-site drug audit (to answer dispensation questions and review of procedures), unfortunately, our team physician has never taken part in this process***. More medication on-site causes unnecessary expenses (most drugs have a limited shelf life and must be returned, if not used, without credit). More problems tracking larger number of medications, more difficulty staying compliant with State Laws. We just returned to Sports Pharm a large number of medications that were expired or that we had in too large of a quantity. So far

returned were 92 Toradol 10mg, 46 Lortab, 28 Toradol 30 mg/injectable, 279 Ultram (non-narcotic pain medication). Last year the team spent approximately $100,000 in various medications. To compare, we spent approximately $ 21,000 on medication in Cleveland. This shows a lack of a thorough inventory system and of control on dispensation. We were told that there was $18,000.00 worth of improper billing of medications on player's insurance (Cigna). This raised a red flag at the Players Benefits Program at the League Office. A number of NFL teams, improperly billed player's insurance but the largest amount was with the Falcons. This amount almost resulted in a fine to the club in order to repay the insurance Company. ***The League decided to pay these fines and better educate the teams and trainers.*** We were also under the radar of the DEA because of the large amount of controlled substances ordered" (emphasis added).

199. In a May 22, 2008 e-mail from Dr. Brown to several Head Trainers, he states that he "had an opportunity to discuss many of the issues with the NFL Management Council" – those issues being the trainers' concerns with their ability to meet requirements related to "storage, record-keeping administration, and dispensing of prescription drugs, especially the controlled drugs that have a high abuse liability and are under the highest levels of scrutiny at both the state and federal level." He goes on to state in that e-mail that "the timing of this initiative was not within [his] domain of decision-making [but that] the NFL Management Council has agreed to [his] decision to modify the deadlines [for reporting] for this year."

200. Yet two years later, when the DEA investigated the clubs, nothing had changed. The clubs still did not understand – and were in woeful non-compliance with – the law regarding controlled substances, as evidenced by the many, many violations thereof as testified to by Drs. Matava, Rettig, Kuykendall, and Marzo, among others and detailed herein.

201. A memorandum[5] obtained from the Atlanta Falcons memorializes a phone call between Rob Geoffroy, the Falcons' Vice President of Finance, Marty Lauzon, the Falcons' Director of Sports Medicine and Performance, Danny Long, an assistant trainer for the Falcons, and Mary Ann Fleming, NFL Director of Benefits, that states in relevant part that "the medication dispensation log contains no physician signatures; there is no control from the doctor to know exactly what has been given to players and what type of communication exists between the trainers and the physician; there is no evidence that the doctor actually knows what medication has been given to the players. This log is in the doctors' office, next to the safe, with the doctor having passing out medication before without signing or putting his initials next to the transaction."

202. But Dr. Pierce Scranton, NFLPS secretary/treasurer, warned the membership on March 3, 1991 that club doctors needed to stop their practice of allowing trainers to dispense drugs: "Briefly, only one Club out of nineteen that responded, had no OTC medication available, and no prescription medication available. Surprisingly, up to nine Clubs of the nineteen surveyed had some nonsteroidal anti-inflammatory medication that was available, which the trainers stated was given out to players by the trainer, if requested. Physician monitoring, according to the Survey, was not done for the medications which you see checked. For those who answered in the affirmative in this regard, you may wish to check your local State laws, as in the State of Washington, it is illegal for anyone but a licensed physician, or a pharmacist, to dispense medication from the training room, which is prescription in nature. For the protection of your trainers and the Club, you may wish to address that issue."

[5] While the memorandum is undated, upon information and belief, the phone conversation it memorializes was referenced in an e-mail dated May 18, 2010 from Mr. Lauzon to Thomas Demitroff, the Falcons' General Manager.

203. Apparently the Falcons, Bengals, Titans, Chiefs, Texans, *etc*. did not check their laws as Dr. Scranton advised them to, or if they did, they failed to adhere to them.

204. Team doctors also gave reports directly to the League about the Medications. Dr. Matava (Rams' doctor) testified that, while president, he attended owners' health and safety committee meetings and regularly visited the League's New York offices for meetings. Both he and Dr. Yates testified that, while serving as president of the NFLPS, they attended, and gave presentations regarding medications (including Toradol) at, owners' meetings, the Toradol meeting having occurred in March 2013.

205. A document titled "NFL Prescription Drug Program Advisory Committee Major Findings and Recommendations" that, per its metadata, was created and last modified on September 7, 2014, concludes in relevant part that non-physician administration and/or dispensing of medications occurs at many Clubs (despite numerous documents mentioned herein, generated before that date and circulated amongst trainers and others, that state that non-physicians cannot do so – *see, e.g.*, minutes from a February 11, 1995 NFLPS business meeting in which Dr. Brown "stated that it is illegal for trainers to dispense prescription drugs") and that a correlation between injuries and prescribing behaviors could not be determined. It recommends that the relationship between Club physician prescribing and Club win-loss performance be assessed along with the relationship between opioid prescribing and other indicators of athlete or team performance.

206. On October 13, 2014, 27 clubs responded to a League survey and noted that an average of 26.7 players (more than half of the active roster) per team took at least one dose of Toradol ***per game***.

207. The amount of drugs dispensed to players was also known by the League. And in a memo e-mailed to all Team Physicians and Head Athletic Trainers on October 31, 2008 by Dr.

Brown, he stated: "Another observation is the report of the number of prescription medication pills provided to a player on a single occasion, from as few as one to as many ***as 40 pills at one time***" (emphasis added).

208. For example, the Indianapolis Colts provided information for Medications they dispensed during the seven months that encompassed the 2004 season. The data was submitted to Dr. Brown, copying team owner Jim Irsay and general manager Bill Polian, by Hunter Smith (trainer) and Dr. Arthur Rettig (team doctor) on January 31, 2005. While the range of different types of drugs dispensed is astounding, the 900 different doses of Toradol (oral and injectable combined) and the 585 doses of Vicodin is particularly telling when one remembers that at any time during the regular season, a Club has only a 53-man roster. On information and belief, the drug usage memorialized therein was average for a club in the NFL at that time.

209. Pursuant to an audit of medications provided to the League, for the Colts, from September 30, 2009 through February 16, 2010, there were 1,172 Toradol 10mg's dispensed, 523 Toradol IM 60 mg 2ml's, and 2,396 doses of Vicodin. The next highest medication dispensed was Mucinex (1105).

210. For the Jets (at least), the usage of Toradol and Vicodin exploded between 2004 and 2009. In a January 26, 2010 e-mail from David Zuffelato to John Mellody and Joshua Koch, he provides a chart showing that in the 2008 season, the Jets dispensed 1,031 doses of oral and injectable Toradol and 1,295 doses of Vicodin (500 and 750 mg) and that, in the 2009 season, their usage of Toradol increased to 1,178 doses and Vicodin increased to 1,564 doses. On information and belief, the Jets are an average NFL club in terms of their Vicodin and Toradol usage during the times identified.

211. And for the Steelers, the numbers only go higher. In a document dated March 1,

2013 from Lawrence Brown (on NFL letterhead) to Dr. Yates (Steelers' team doctor), Dr. Brown notes that "there was documentation of dispensing by a non-physician [despite the numerous warnings that had been going around the League since the early 1990s, as documented herein]. Please re-evaluate to insure that this behavior is congruent with federal and state regulations." It also notes that during the "calendar year 2012, the [Steelers] medical staff … prescribed 7,442 doses of NSAIDs [again, 53-man roster] compared to League-wide average of 5,777 doses of NSAIDs per Club. Regarding controlled medications, [the Steelers] prescribed 2,123 doses of controlled medications compared to League-wide average of 2,270 doses of controlled medications per Club. By total doses, your Club ranks 10th in the greatest volume of NSAIDs provided by an NFL Club and 14th in the greatest volume of controlled medications provided by an NFL Club."

212. Upon information and belief, the types of problems identified above had been known to the League since at least 1973 when it first implemented its drug program.

## IV. DESPITE THE FOREGOING, THE LEAGUE DID NOTHING.

213. One of the most striking aspects of the audit program described above is that, despite the thousands of pages of documented illegal violations engaged in by all the clubs, there is no follow up from the League. No system, *e.g.*, whereby a club receives a warning for a first violation and stiffer sentence for subsequent violations. Indeed, as documented herein, clubs would regularly report violations year after year and the League would simply process the information and do nothing about it. That willingness to do nothing cloaked the failings described to the League with an aura of legitimacy.

214. Indeed, even after the DEA began investigating the clubs and the League in 2010 relating to Medications, the League did nothing. That investigation began after a Chargers player

was found with 100 Vicodin in his possession after being arrested, all of which came from the Chargers' Dr. David Chao, and the Saints were involved with arbitration regarding the theft of controlled substances from their locker room. On August 11, 2010, doctors Conner (Carolina), Pellman (NFL medical advisor), Yates (Pittsburgh), Caldwell (Miami), Casolaro (Washington, D.C.), Rettig (Indianapolis), Matava (St. Louis), and Tucker (Baltimore) had a conference call to discuss that investigation.

215. Minutes of that call record the following:

- Drs. Conner, Yates, and Pellman met in the summer of 2010 with DEA representatives in Washington D.C. to open lines of communication between the DEA, the NFL and the NFLPS.
- At that meeting, which lasted two hours, the DEA gave a 78 slide PowerPoint presentation that offered the following "take home messages":
    - Written prescriptions must be patient specific and medication specific;
    - Common stock bottles must be ordered pursuant to DEA form 222;
    - A DEA registrant must have a distinct DEA number for the specific address where the drugs are stored, including facility, stadium and training camp;
    - Trainers cannot handle the stock bottles;
    - Intermediaries are not allowed to dispense controlled substances;
    - Physicians cannot travel across state lines with stock bottles;
    - Physicians cannot administer or dispense controlled substances in states where they are not registered; and
    - Physicians cannot write a prescription for controlled substances other than in the state where they are registered.

- "***We don't want to give [the DEA] the fodder that we have all been doing this wrong. We don't want to show them our deficiencies***" (emphasis added).
- The doctors agreed that things needed to change, that they had to communicate what was going on to the remainder of the NFLPS, and that the first step in doing so would be to "very carefully and very thoroughly draft info, with the help of the league attorneys, and put it on the members only area of the [NFLPS] website," which they in fact did.

216. Every doctor deposed – Kuykendall, Rettig, Matava, Chao, Yates, Pellman, and Tucker – has testified that they violated one or more of the foregoing "take home messages," also known as federal laws and regulations, while serving in their capacity as a team doctor. Indeed, Dr. Yates testified that a majority of clubs as of 2010 had trainers controlling and handling prescription medications and controlled substances when they should not have.

217. In discussing what to do about dispensing controlled substances to visiting players in an e-mail exchange dated September 8, 2010 by and among Drs. Yates, Brown, Conner and Pellman, Dr. Yates states that "In order to solve the ***NFL/DEA Dilemma*** we all need to work together and 'get along'. NONE of us are immune from scrutiny, trainers, physicians, advisors (employed or independent) ***Park Ave management*** and so on. As I've said before: ***To date, there has not been a constructive solution provide by the home NFL office other that the meet and greet with the DEA and the subsequent legal conference calls***. The information to date to the Society is one of 'Good luck' and you are on your own to decide how to adhere to 'the law'!!! ***We are where we are because of our association with the NFL***" (emphasis added).

218. On September 20, 2010, Dr. Pellman "took the liberty of putting together a list of questions/problems that been posed to me by team physicians, ATCs and administrators along with possible responses/solutions" and e-mailed the same to John Norwig (Steelers trainer) and

Steve Antonopulos (Broncos trainer). Among the items addressed in that list is a concern from "several of the team physicians … that the local physician [proposed to provide controlled substances to a visiting team to ensure compliance with the CSA] may not know much about how things are typically managed with NFL players." One of the "possible responses" to that concern is that "according to DEA[,] physicians are to prescribe controlled substances in a manner that is consistent with the standard of the medical community … not the NFL medical community."

219. In February 2011, DEA agent Joe Rannazzi came to the Combine and spoke to the NFLPS membership about the CSA and its implementing regulations and how the doctors had to abide by them. In other words, no NFL doctor in attendance could plausibly deny not being aware of these regulations after that Combine meeting.

220. And yet the NFL still failed to comply with federal law. One such example is with the relatively easy-to-understand ban on traveling with controlled substances, something with which the NFL should have been able to comply in 2011 (let alone from the time the ban was originally put in place). Attached hereto as **Exhibit C** is a chart identifying specific instances when teams travelled with controlled substances.

221. Yet it took until 2015 for the League to implement a policy that all Clubs had to follow – and then only in response to DEA raids of teams traveling with controlled substances – in which, rather than travel with controlled substances, each team had to have independent doctors registered in their home state to act as intermediaries for dispensing controlled substances to visiting teams. In the years between 2011 and the implementation of that policy, upon information and belief, many Clubs continued to travel with controlled substances, finding it necessary to comply with the League's Business Plan.

222. Another example of the lip service paid by the League is the Matava Task Force. Months after the Task Force issued its recommendations, Dr. Matava, in an e-mail to Dr. Yates, questioned the failure of team physicians to respond to surveys regarding Toradol usage: "If these guys want to give Toradol because they think it is needed or acceptable, then they should have the balls to say so. What are they afraid of?" He commented in the same e-mail that "[c]ontinued use of Toradol in the present climate is not rational." Yet upon information and belief, the "T Train" – Toradol injections before a game – kept rolling.

223. Ultimately, the Task Force findings were forwarded to Dr. Pellman at the League office and the owners according to the deposition testimony of Dr. Yates. But Dr. Yates also testified that as late as 2016, he witnessed players lining up for the "T Train," something that had been occurring with the Steelers for at least the previous 15 years.

224. In an e-mail dated September 9, 2010 from Pepper Burrus, the Packers' head trainer, to John Norwig, Steelers head trainer, Mr. Burrus states: "I expect no immediate guidance from Dr. Brown or Dr. Pellman, other than 'cover your own behind.'"

225. In an e-mail dated May 19, 2010 from Rick McKay, Falcons President, to Dr. Pellman, Mr. McKay states: "Here is an exchange that I am not happy about – this is Jeff Fish trying to get after Scott G. My question is Mary Ann Fleming (NFL Director of Benefits) recommending the replacement of our Drs. I need to know – is this really true and does she realize the on-site trainer is in control??? I need to keep this confidential." The doctors were not replaced.

226. Dr. Chao testified that he asked Dr. Pellman and Dr. Conner to tell the truth about how all Clubs were dispensing Medications in a manner similar to what the Chargers were doing but they never did.

227. On January 20, 2011, Damon Mitchell, a Chargers trainer, sent an e-mail to all NFL head trainers in which he stated: "The San Diego Chargers are conducting a survey on controlled medications. I am asking if you would complete the attached survey rather than your physician. We feel the ATCs have all of the necessary information to complete it and give us the best response rate so we may analyze the collected data accurately."

228. Dr. Chao testified emphatically that Dr. Pellman squelched the survey because, upon information and belief, it would bear out what Dr. Chao told anyone who would listen to him that what he was doing with his players was the norm for the League.

229. Knowing all of the above, the NFL continues to state publicly that its doctors provide first class health care to its players. In his response to the Harvard Report dated November 1, 2016, Jeffrey Miller, NFL Executive Vice President for Health and Safety Initiatives, stated "As is set forth in more detail below, we are proud that this shared commitment has ensured that NFL players receive unparalleled medical care, provided by world-class, highly credentialed physicians, who are supported by superior athletic trainers … NFL players are cared for by some of the world's finest medical professionals." Brian McCarthy, an NFL spokesperson, later told the Washington Post the NFL teams and their medical staffs "continue to put the health and safety of our players first, providing all NFL players with the highest quality medical care." Washington Post, "NFL doctors are on the wrong team." On information and belief, the NFL has publicly made similar statements for decades.

## V. THE DAMAGE IS DONE – THE MEDICATIONS AS ADMINISTERED AND APPROVED BY THE NFL CREATE LASTING LONG-TERM HEALTH EFFECTS.

230. Leslie Z. Benet, Ph. D. is a noted expert in the fields of pharmacology and biopharmaceuties, among others. He prepared a declaration in the *Evans* matter (the "Benet Report").

231. Therein, Dr. Benet stated "In my opinion there was, at the time of drug administrations to the NFL players, clear-cut warnings in the FDA-approved package inserts for these drugs, based on sound scientific evidence, that continued use of these medications could have significant deleterious effects on the players during and beyond their active career as players in the NFL, particularly with respect to musculoskeletal morbidity, but also with respect to kidney, liver and cardiac morbidities and addiction conditions."

232. Dr. Benet also noted "In my opinion, the use of pain masking drugs leads to increased morbidity in terms of musculoskeletal, kidney, liver, cardiac and for drug addiction beyond what is experienced by NFL players who do not receive drugs to mask pain sensors indicating debilitation conditions that should be allowed to heal without constant contusions." "Of particular relevance to NFL players would be the risk for renal failure due to volume depletion and the risk of bleeding following injury."

233. Dr. Benet condemned the prophylactic use of the drugs. "There is no doubt that NFL players in their job will experience pain. However, administering drugs to NFL players prior to experiencing pain eliminates the signals to the player of actual or potential tissue damage and ultimately leads to more severe damage." Benet was particularly critical of the extensive prophylactic use of toradol. "In my opinion the fact that the NFL teams supported and condoned

the administration by team physicians of the pain killing drug toradol prior to games was an insidious action guaranteed to lead to long-term negative health effects in the NFL players."

234. According to Dr. Benet, toradol has a number of black box warnings in its package insert. A black box warning is the strictest warning put in the labeling of prescription drugs or drug products by the FDA when there is reasonable evidence of an association of a serious hazard with the drug.

235. The prominent black box warnings for toradol state that the drug is indicated for short term (up to five days in adults) management of moderately severe, acute pain that requires analgesia at the opioid level. The total combined use of toradol oral and ketorolac tromethamine should not exceed five days. This five-day limit and a daily maximum of 40 mg is states so as not to increase the risk of developing serious adverse events such as: gastrointestinal risk, cardiovascular risk, which can be fatal; renal risk, and risk of bleeding. In his opinion, it is disingenuous to believe that because a player may not be dosed with toradol continuously over a five day period that the foregoing warnings are of no consequence when players receive the drug. In short, the administration of toradol to players also taking NSAIDs such as Indocin and Naprosyn, very common in the NFL, increases the risk of liver and kidney problems, not to mention bleeding.

**A. <u>More Severe and Permanent Musculoskeletal Injuries</u>.**

236. The NFL's reliance on opioids, NSAIDs, anesthetics, and other medications to make its Business Plan operate effectively has also directly resulted in more severe and more permanent musculoskeletal injuries in players. Scientific research has revealed two reasons for this consequence.

237. First, opioids, NSAIDs, and anesthetics operate to "mask" pain, one of the body's

most fundamental protective mechanisms. By enabling individuals to undertake physical activity that is detrimental to recovery, drugs that mask pain heighten the severity of and render permanent injuries that would have otherwise healed.

238. According to the International Association for the Study of Pain, pain is defined as "[a]n unpleasant sensory and emotional experience associated with actual or potential tissue damage, or described in terms of such damage." Combined with swelling and limited range of motion, pain is the body's foremost defense against further injury. Because of this, the vast majority of physicians recommend a period of rest and isolation of the painful body part to allow the body part to heal and to prevent further injury.

239. Local anesthetics thwart that process as they temporarily interrupt the action of all nerve fibers, including pain-carrying ones, by interfering with the actions of sodium channels. Such medications cause a complete loss of feeling in the area into which the drug is injected, rendering ineffective all the body's normal protective mechanisms and dramatically increasing the chance of permanent injury.

240. Analgesics, including opioids and NSAIDs, block pain by inhibiting the pain-producing chemicals that cause pain. Clinically, these medications simply mask symptoms, thereby increasing the likelihood of more severe and permanent injury.

241. Second, medical science indicates that the chemical properties of certain prescription painkillers actually inhibit healing in a wide array of musculoskeletal injuries.

242. Peer-reviewed experimental studies suggest prescription painkillers have a detrimental effect on tissue-level repair of injuries and those medications have been shown to impair mechanical strength return from acute injury to bone, ligament and tendon.

243. In particular, opioids and certain NSAIDs have been linked to increased rates of

osteoporosis, increased fracture risk, diminished muscle mass, increased fat mass and anemia.

244. Medical science therefore confirms the link between the use of prescription painkillers and the astounding rates of permanent neck, back, knee, shoulder and other musculoskeletal injuries suffered by former NFL players, including Plaintiffs.

**B. Long-Term Health Consequences Caused by Prescription Pain Killers.**

245. The constant pain Plaintiffs and other former NFL players experience from their injuries leads directly to a host of other health problems.

246. Leading experts recognize that former NFL players who suffer from permanent musculoskeletal injuries often cannot exercise due to pain or other physical limitations, leading to a more sedentary lifestyle and to higher rates of obesity.

247. According to the Centers for Disease Control and Prevention, obesity is linked to: coronary heart disease, type-2 diabetes, endometrial cancer, colon cancer, hypertension, dyslipidemia, liver disease, gallbladder disease, sleep apnea, respiratory problems and osteoarthritis.

248. Surveys of former NFL players confirm that the players suffer from significantly higher rates of all these disorders when compared to the general population.

249. In addition, it is well established that long-term use of opioids is directly correlated with respiratory problems and these problems are made worse by use of alcohol together with opioids.

250. Long-term opioid use has also been tied to increased rates of certain types of infections, narcotic bowel syndrome, decreased liver and kidney function and to potentially fatal inflammation of the heart. Opioid use coupled with acetaminophen use has been linked to hepatic (liver) failure.

251. Long-term use of opioids has also been linked directly to sleep disorders and significantly decreased social, occupational and recreational function.

**C. Health Effects Specifically Stemming From Use of NSAIDs.**

252. NSAIDs are often viewed as a non-addictive "safer" alternative to narcotics. NSAIDs have been shown to be among the most highly-prescribed painkillers for athletes.

253. Despite the popular notion that NSAIDs are "safer" than other types of prescription painkillers, NSAIDs are associated with a host of adverse health consequences.

254. The two main adverse reactions associated with NSAIDs relate to their effect on the gastrointestinal ("GI") and renal systems. Medical studies have shown that high doses of prescription NSAIDs were associated with serious upper GI events, including bleeding. Additionally, GI symptoms such as heartburn, nausea, diarrhea, and fecal blood loss are among the most common side effects of NSAIDs. Medical reports have also noted that 10-30% of prescription NSAID users develop dyspepsia, 30% endoscopic abnormalities, 1-3% symptomatic gastroduodenal ulcers, and 1-3% GI bleeding that requires hospitalization. Studies also indicate that the risk of GI side effects increases in a linear fashion with the daily dose and duration of use of NSAIDs.

255. NSAIDs are also associated with a relatively high incidence of adverse effects to the renal system. Medical journal articles note that "[p]rostaglandin inhibition by NSAIDs may result in sodium retention, hypertension, edema, and hyperkalemia." One study showed the risk of renal failure was significantly higher with use of either Ketorolac or other NSAIDs and, as a result, the FDA prohibits treatment with Ketorolac for more than five continuous days.

256. Patients at risk for adverse renal events should be carefully monitored when using NSAIDs. As the NFLPS Task Force stated, such patients include those with "congestive heart

failure, renal disease, or hepatic disease[, and] also include patients with a decrease in actual or effective circulating blood volume (*e.g.*, dehydrated athletes with or without sickle cell trait), hypertensives, or patients on renin-angiotensis-aldosterone-system inhibitors (formerly ACE inhibitor) or other agents that affect potassium homeostasis."

257. Additionally, the anti-coagulatory effect of certain NSAIDs, including Ketorolac, can lead to an increased risk of hemorrhage and internal bleeding. The *Physician's Desk Reference* specifically states that the NSAID Ketorolac (Toradol) is "contraindicated as a prophylactic analgesic before any major surgery, and is contraindicated intra-operatively when hemostasis is critical because of the increased risk of bleeding."

258. Moreover, certain NSAIDs can adversely affect the cardiovascular system by increasing the risk of heart attack. Studies have shown that patients with a history of cardiac disease who use certain NSAIDs may increase their risk for heart failure up to ten times.

259. Finally, other systemic side effects associated with the use of NSAIDs include headaches, vasodilatation, asthma, weight gain related to fluid retention and increased risk for erectile dysfunction. Medical reports have also noted that "[i]ncreasing evidence suggests that regular use of NSAIDs may interfere with fracture healing" and that "[l]ong-term use of NSAIDs…has also been associated with accelerated progression of hip and knee osteoarthritis."

## VI. NFL PLAYERS SUFFER INJURIES AND AILMENTS AT A RATE HIGHER THAN THE GENERAL POPULATION.

260. As former NFL player and coach Mike Ditka testified before Congress, football is "not a contact sport, it's a collision sport." With a player's average career truncated to about three and a half years, the majority of players walk away (to the extent they can) with beaten and tattered bodies.

261. Former professional football players have another name for the multiple "car

crashes" they survived each game – "plays." With violent collisions a celebrated part of the king of American sports, it is clear why so many players get carted off the field – and eventually leave the sport – with lingering aches and debilitating pain similar to those sustained in car accidents.

262. Playing in the NFL thus means playing with pain and often requires playing despite that pain. Given the violent nature of the sport, it is hardly surprising that analyses of NFL injury data reveal that over half of NFL players suffer one or more musculoskeletal injuries in a given year and the vast majority suffer significant musculoskeletal injuries throughout their careers. According to DeMaurice Smith, head of the NFLPA, pursuant to the League's own statistics, professional football has a ***100 percent injury rate***.

263. But with media attention on, and League-mandated testing solely for, performance-enhancing drugs such as steroids and HGH, the NFL has been able to hide the true performance-enhancing drugs – opioids, NSAIDs, and local anesthetics – that not only mask players' pain, allowing them to return to play long before they should, but have equal or worse effects on players' health than steroids or HGH. Hiding the truth about the Medications allowed the NFL to hide from Plaintiffs the truth about its Business Plan.

264. In 2011 by Dr. Linda Cottler of the Department of Psychiatry at Washington University published: "Injury, Pain, and Prescription Opioid Use Among Former National Football League (NFL) Players," 116 *Drug and Alcohol Dependence* 188-194 (2011) (the "Wash U / ESPN Study").

265. The Wash U / ESPN Study concluded that "no research has been published to date concerning the impact of pain and use and misuse of opioids both during and after a player's professional athletic career."

266. Dr. Eric Strain of the Department of Psychiatry and Behavioral Sciences at the

Johns Hopkins School of Medicine found that the Wash U / ESPN Study "nicely illuminates an area needing light, helping us understand a subject that has received scant attention and driving us to want to know more about a significant topic." Eric C. Strain, "Drug Use and Sport – A Commentary on: Injury, Pain and Prescription Opioid Use Among Former National Football League Football Players by Cottler *et al.*," 116 *Drug and Alcohol Dependence* 8-10 (2011).

267. The Wash U / ESPN Study surveyed 644 former NFL players "to evaluate level of pain and other factors associated with opioid misuse during their NFL career and in the past 30 days." It established that:

- 93 percent of the players sampled reported pain and 81 percent of the players perceived their pain to be moderate to severe;
- "[P]layers who misused during their NFL career were 3.2 times as likely to misuse in the past 30 days as NFL players who used just as prescribed;"
- Of the players who reported misuse in the past 30 days, "78% had a history of opioid misuse during their NFL career;"
- Comparing former players who used opioids as prescribed to those who misused, the study showed that "misusers had increased odds for poor health at retirement . . . and had 3 or more NFL injuries . . . ;"
- "Misusers were less likely than non-users . . . to report excellent health in the past 30 days . . . , more likely to report knee, shoulder and back injuries, and over 6 times as likely to report 3 or more NFL injuries;"
- "Misusers were at increased odds of having a career ending injury and nearly 8 times as likely to be using a cane, walker or wheelchair . . . compared to their non-using teammates;"
- "[T]wo additional factors were strongly associated with opioid use: requiring a cane, walker or wheelchair . . . , and having severe pain . . .;" and
- "The overall rate of misuse during NFL play was 37% . . . , a rate 2.9 times higher than a lifetime rate of non-medical use of opioids among the general population of a comparable age."

268. Ultimately, Dr. Cottler found that "[a]t the start of their careers, 88 percent of these

men said they were in excellent health. By the time they retired, that number had fallen to 18 percent, primarily due to injuries. And after retirement, their health continued to decline. Only 13 percent reported that they currently are in excellent health. They are dealing with a lot of injuries and subsequent pain from their playing days. That is why they continue to use and misuse pain medicines."

## VII. PLAINTIFFS HAVE BEEN INJURED BY THE NFL'S NEGLIGENCE.

269. The named Plaintiffs rarely, if ever, received written prescriptions (or for that matter, anything in writing) for the medications they were receiving while playing in the NFL.

270. Regardless of the era, the named Plaintiffs all received the bulk of their pills not in bottles that came with directions as to use but rather in small manila envelopes that often had no directions or labeling. The player would receive the envelope and be told to take it.

271. The named Plaintiffs never received statutorily mandated warnings as to the side effects of the Medications. DeMaurice Smith, Executive Director of the NFLPA, has questioned whether the players were ever told about the risks and benefits of the Medications they were receiving from team doctors and trainers, and concluded that they generally have not. Smith stated "[y]ou don't have to walk far to find virtually every former player saying their team doctor never advised them about side effects of the medications they were taking."

272. Further, consistent with the NFL's Business Plan, NFL doctors and trainers would push to return players to the field, regardless of what injuries they had.

273. Mr. Dent suffers from an enlarged heart and nerve damage, particularly in his feet. In 1990, while playing in Seattle, Mr. Dent suffered a broken bone in his foot. He was told by team doctors and trainers at the time that he had done all the damage that could be done to that foot and that, while he therefore could have surgery, they could also supply him with painkillers

to allow him to continue playing. Trusting that the League and its team doctors and trainers had his best interests at heart, he chose to continue playing and for the following eight weeks, he received repeated injections of painkillers as well as pills to keep playing. Today, Mr. Dent has permanent nerve damage in that foot.

274. Over the course of his career, Mr. Dent became dependent on painkillers, a slow process that overtook him without him being cognizant of it happening. After his career ended, he was no longer able to obtain painkillers from the NFL and was forced to purchase over-the-counter painkillers to satisfy his need for medications. Over the course of that time, he has spent an extensive amount of money on such medications.

275. Mr. Dent also suffers from muscular skeletal pain including, but not limited to, his right big toe, left ankle, left hip, both shoulders, right wrist, fingers and hand.

276. JD Hill left the League addicted to painkillers, which he was forced to purchase on the streets to deal with his football-related pain, a path that led him to other street medications. He eventually became homeless and was in and out of 15 drug treatment centers for a period of over 20 years until overcoming his NFL-sponsored drug addiction.

277. Mr. Hill's post-NFL decline culminated in a 2005 guilty plea to Social Security fraud, though he received probation because the violations at issue occurred while Mr. Hill was in and out of drug treatment centers. He has subsequently repaid all of the money at issue.

278. Mr. Hill is now a pastor/substance abuse counselor for the Christian community. But while he has been able to clean up his life and re-establish relationships with his wife, children and grandchildren, his addiction has left deep scars, both literally and figuratively. After leaving the NFL, Mr. Hill had to take Prednisone to deal with the pain from his injuries. That Prednisone weakened his immune system. He then developed an abscess in his lung, requiring major surgery

resulting in the loss of part of a lung. In addition, he has atrial fibrillation that requires doctor-supervised medication. Mr. Hill has recently been hospitalized for blood clots. Finally, he suffers regularly from muscular-skeletal pain, including, but not limited to, his ankles, shoulders, fingers, neck and back.

279. Since retiring, Keith Van Horne has had two cardiac ablations and has suffered from, and continues to suffer from, atrial fibrillation, which began in 2004, and premature ventricular contractions. He has also suffered from tachycardia and regularly suffers from muscular-skeletal pain, including but not limited to, his arms, ankles, knees, back, biceps, neck, shoulders and elbows.

280. Since retiring from the NFL, Ron Stone has consistently suffered from muscular-skeletal pain including, but not limited to, his elbows, thumbs and knee.

281. Since retiring Ron Pritchard has had six knee surgeries and replacements for both of his knees as well as shoulder, elbow, hand and foot surgery. He suffers from muscular-skeletal pain including, but not limited to, his knees, right hand, right elbow and right foot.

282. Named Plaintiff Jim McMahon discovered for the first time in 2011 or 2012 that he had suffered a broken neck at some point in his career. He believes it happened during a 1993 playoff game when, after a hit, his legs went numb. Rather than sit out, he received Medications and was pushed back on the field. No one from the NFL ever told him of this injury. In addition, he learned only a few years ago that he had broken an ankle while playing; at the time, he was told it was a sprain.

283. In addition, Mr. McMahon suffers from arthritic pain in his hands and limited motion, as well as extreme pain, in his right shoulder. He also has muscular skeletal pain including, but not limited to, his knees, back, neck, elbows and ankles. He also has kidney problems. The

foregoing pain and limitations stem from injuries Mr. McMahon suffered while playing in the NFL that were never allowed to properly heal and were aggravated by continued play.

284. Over the course of his NFL career, Mr. McMahon also developed a dependency to the habit-forming Medications that were extensively administered to him by the NFL. Because of his addiction, he spent considerable sums of money and resources to obtain the Medications that had previously been provided to him in large quantities by the NFL.

285. Mr. Green, who received hundreds of NSAIDs (which can cause kidney damage) from NFL doctors and trainers, had tests performed on him while he played in the NFL that showed he had high creatinine levels, indicative of a limitation on his kidney function. No one from the NFL ever told him of those findings. In November 2012, he had a kidney transplant due to failing kidneys. Since retiring, he has suffered three heart attacks. He also suffers from high blood pressure. He also suffers regularly from musculo-skeletal pain, including, but not limited to, his hips, left shoulder, hands, feet, right knee and elbows.

286. Similarly, while any doctor who looked at named Plaintiff Jeremy Newberry's records should have seen the decreasing kidney function from his blood levels, Mr. Newberry was never told about that problem while with the League. Indeed, if not for one night after retiring that Newberry's blood pressure was measured at 250 over 160, at which point he was hospitalized for days, Newberry might have died from his kidney problems. He suffers from Stage 3 renal failure, high blood pressure and violent headaches for which he cannot take any medications that might further deteriorate his already-weakened kidneys. He also suffers regularly from musculo-skeletal pain, including but not limited to both knees, both shoulders, spine, left ankle and both hands.

287. In April 2014, Mr. Wiley, at age 39 and with no history of kidney disease, was hospitalized and diagnosed with partial renal failure. He had lost half of his kidney function. Mr.

Wiley continues to receive treatment and frequent medical monitoring for this condition. In addition, he regularly suffers from muscular-skeletal pain, including, but not limited to, his back, feet and right shoulder. He also had a repaired tear in his abdominal wall.

**CLASS ACTION ALLEGATIONS**

288. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth herein.

289. Plaintiffs bring this action on behalf of themselves and all other similarly-situated individuals pursuant to Fed. R. Civ. P. 23, consisting of all Players, which for class purposes shall mean anyone listed on one of the Clubs' rosters from the point in a season where a final roster decision is announced (for the 2016 season, this would have been when the 53 man roster was announced on September 3, 2016) through the completion of that season, who received Medications, which for class purposes shall include, but not be limited to, Naprosyn, Indocin, Vioxx, Prednisone, and Toradol, from an NFL Club.

290. Excluded from the Class are Defendant and any entities in which Defendant or its subsidiaries or affiliates have a controlling interest, and Defendant's officers, agents, and employees.

291. The members of the Class are so numerous that joinder of all members of any Class would be impracticable. Plaintiffs reasonably believe that Class members number thousands of people in the aggregate. The names and addresses of Class members are identifiable through documents maintained by Defendant.

292. **Commonality and Predominance:** This action involves common questions of law or fact, which predominate over any questions affecting individual Class members, including, among others:

(a) Whether Defendant provided or administered Medications to the Class Members?

(b) Whether Defendant violated the Controlled Substances Act's requirements governing acquisition of controlled substances?

(c) Whether Defendant violated the Controlled Substances Act's requirements governing storage of controlled substances?

(d) Whether Defendant violated the Controlled Substances Act's requirements governing distribution of controlled substances?

(e) Whether Defendant violated the Food and Drug Act's requirements governing distribution of prescribed medications?

(f) Whether the provision or administration of Medications to Class Members, as described above, violate state pharmaceutical laws regulating the acquisition, storage and dispensing of Medications?

(g) Whether the Class Members provide informed consent authorizing the provision or administration of Medications?

(h) Whether Defendant owed a duty and breached that duty to Class Members by violating the federal and state laws described herein?

(i) Whether Defendant's breach of a duty to Class Members by failing to comply with federal and state laws governing the provision and administration of Medications proximately caused Plaintiffs' and Class Members' damages?

293. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs individually and on behalf of the members of the Class. Similar or identical statutory and common law violations, business practices, and injuries are involved.

Individual questions, if any, pale by comparison, in both quantity and quality, to the numerous common questions that dominate this action.

294. **Typicality**: Plaintiffs' claims are typical of the claims of the other members of the Class because, among other things, Plaintiffs and the other Class Members were injured through the substantially uniform misconduct by Defendant. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all other Class members, and there are no defenses that are unique to Plaintiffs. The claims of Plaintiffs and those of other Class Members arise from the same operative facts and are based on the same legal theories.

295. **Adequacy of Representation**: Plaintiffs are adequate representatives of the classes because their interests do not conflict with the interests of the other Class Members they seek to represent; they have retained counsel competent and experienced in complex class action litigation and Plaintiffs have and will continue to prosecute this action vigorously. The Class Members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

296. **Superiority:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this matter as a class action. The damages, injuries, harm, or other financial detriment suffered individually by Plaintiffs and the other members of the are relatively small compared to the burden and expense that would be required to litigate their claims on an individual basis against Defendant, making it impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation would create a potential for inconsistent or contradictory judgments, and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the

benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

297. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(c)(4) in light of the nature and extent of the predominant common particular issues, exemplified in the common questions set forth above, generated by Defendant's consistent agreement, and consequent consistent policy, of promoting and facilitating the use of the Medications.

## CAUSES OF ACTION

### COUNT I
### NEGLIGENCE

298. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth in this Count.

299. The NFL's provision and administration of substances described herein violated the CSA's requirements governing the acquisition, storage, provision and administration of, and recordkeeping concerning, Schedule II, III and IV controlled substances.

300. The NFL violated the FDCA's requirements for prescriptions, warnings about known and possible side effects, and proper labeling, among other violations.

301. The NFL's provision and administration of Medications also violated state laws governing the acquisition, storage, and dispensation of prescription medications.

302. The NFL's provision and administration of Medications also violated state laws governing the recordkeeping mandated for the acquisition, storage and dispensation of prescription medications.

303. For example, the NFL violated the California Pharmacy Law, Calif. Bus. & Prof. Code § 4000, *et seq.* in a number of ways, including: (i) permitting the administration and provision of prescription medications by persons not properly authorized to do so, (ii) without valid

prescriptions or proper medical care providers' orders, evaluations, diagnoses, warnings and monitoring.

304. The NFL had a duty to conduct its business in a lawful manner and breached it. The NFL's violations of the various federal and state laws noted above constitutes negligence per se.

305. Finally, to the extent the NFL voluntarily undertook a duty apart from those identified above to ensure the proper recordkeeping, administration and distribution of Medications, it breached that duty.

306. The NFL's violation of the CSA, FDCA, and state laws and breach of its duties proximately caused Plaintiffs and the Class Members' currently-manifest and latent physical injuries, economic losses, emotional distress, pain and suffering and other losses, harms and damages.

307. The NFL's violations and breaches were necessary to create the volume of Medications necessary to implement the NFL's return to play Business Plan which proximately caused the Plaintiffs' and Class Members' injuries.

308. Plaintiffs and the Class Members' currently-manifest and latent physical injuries, economic losses, emotional distress, pain and suffering and other losses, harms and damages resulted from events and conditions that the CSA and FDCA, and applicable state laws, were designed to prevent.

309. Plaintiffs and the Class Members are within the class of persons for whose protection the CSA and FDCA, and applicable state laws, were adopted.

310. As a result of its violations of the CSA and FDCA, and of applicable state laws, the NFL is negligent and liable to Plaintiffs and the Class Members for the full measure of damages of all categories permissible under applicable law.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray for judgment as follows:

a. Certify a class and appoint Plaintiffs and Class representatives and Plaintiffs' counsel as Class counsel;

b. Awarding Plaintiffs and the Class compensatory damages against the NFL;

c. Awarding Plaintiffs and the Class punitive damages against the NFL;

d. Awarding Plaintiffs and the Class such other relief as may be appropriate; and

e. Granting Plaintiffs and the Class their prejudgment interest, costs and attorneys' fees.

Dated: December 5, 2018

Respectfully Submitted,

/s/

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**DEMAND FOR JURY TRIAL**

Plaintiffs Richard Dent, Jeremy Newberry, Roy Green, J.D. Hill, Keith Van Horne, Ron Stone, Ron Pritchard, James McMahon, and Marcellus Wiley request a trial by jury on all issues for which they are entitled to a jury.

Dated: December 5, 2018

By /s/
William N. Sinclair
Silverman|Thompson|Slutkin|White|LLC